Indian Claims Commission

CARRY THE KETTLE FIRST NATION INQUIRY

Report on: Cypress Hills

102-02881/

Indian Claims Commission

Commission des revendications des Indiens

July 27, 2000

Chief Kurt Adams and Council
Carry the Kettle First Nation

The Honourable Robert Nault
Minister of Indian Affairs and Northern Development

The Honourable Anne McLellan
Minister of Justice and Attorney General of Canada

RE: Carry the Kettle First Nation Inquiry - Cypress Hills Claim

On August 30, 1996, Tom Waller, counsel for the Carry the Kettle First Nation, wrote the Commission requesting an inquiry on behalf of his client. The Commission began its work by convening a planning conference on November 26, 1996, where the parties discussed the issues pertaining to this claim and the conduct of the inquiry.

This inquiry deals with whether a reserve was created in the Cypress Hills in 1880, either legally or de facto. In the course of our deliberations, the Commission reviewed hundreds of pages of documents related to this inquiry. We held two information-gathering sessions at the Cypress Hills Four Seasons, Cypress Hills Interprovincial Park, on May 30, 1997, and on October 20, 1997. On May 5, 1999, the Commission heard oral submissions from counsel for the parties on the legal issues raised in this inquiry.

Our review of the facts of this claim, together with our legal analysis, findings, and recommendations to the parties, is set out in the attached report, which we are honoured to present to you on this date.

FOR THE INDIAN CLAIMS COMMISSION

P.E. James Prentice, QC
Commission Co-Chair

Roger J. Augustine
Commissioner

Carole T. Corcoran
Commissioner

CANADA

Mailing address/Adresse postale
P.O. Box/C.P. 1750
Station/Succursale "B"
Ottawa, Canada K1P 1A2

Physical address/Adresse municipale
Éd. Enterprise Building
Suite 400 - 427 ouest, av. Laurier Ave. West
Ottawa, Canada K1R 7Y2

Tel (613) 943-2737 *Fax* (613) 943-0157
www.indianclaims.ca

INDIAN CLAIMS COMMISSION

CARRY THE KETTLE FIRST NATION INQUIRY
CYPRESS HILLS CLAIM

PANEL

Commission Co-Chair P.E. James Prentice, QC
Commissioner Roger J. Augustine
Commissioner Carole T. Corcoran

COUNSEL

For the Carry the Kettle First Nation
Thomas J. Waller

For the Government of Canada
Aly N. Alibhai

To the Indian Claims Commission
David E. Osborn, QC / Kathleen N. Lickers

July 2000

CONTENTS

EXECUTIVE SUMMARY v

PART I INTRODUCTION 1

BACKGROUND TO THE INQUIRY 1
MANDATE OF THE INDIAN CLAIMS COMMISSION 2

PART II HISTORICAL BACKGROUND 5

CARRY THE KETTLE FIRST NATION 5
Assiniboine Use and Occupation of the Cypress Hills 7
Ancestral Connection to the Cypress Hills 9
Cypress Hills Massacre 12
ESTABLISHING ORDER IN THE CYPRESS HILLS, FORT WALSH, 1875 TO 1883 15
TREATY 4, 1874 17
Assiniboine Adhesion to Treaty 4, 1877 23
APPOINTMENT OF EDGAR DEWDNEY AS INDIAN COMMISSIONER, 1879 26
SELECTING THE ASSINIBOINE RESERVE SITE, CYPRESS HILLS, 1879 30
Assiniboine Reserve, Little Child's Reserve, and Farming Agencies, 1879–1880 34
Survey of the Reserve, 1880 40
DEWDNEY'S RELOCATION PROPOSAL, NOVEMBER 1880 47
INDIAN INFLUX TO FORT WALSH, SPRING AND SUMMER 1881 51
Maple Creek, Little Child, and the Assiniboine Band, 1881 54
First Attempt to Settle the Assiniboine Band at Maple Creek, June 1881 57
Directions from Ottawa, July 1881 61
CLOSING FORT WALSH, AUGUST 1881 62
Fort Walsh, Winter 1881–82 65
Second Attempt to Settle Band at Maple Creek, February 1882 70
MOVE TO QU'APPELLE, SPRING 1882 72
THE "NEW RESERVE," INDIAN HEAD, SUMMER 1882 78
Fort Walsh, Fall 1882 83
Fort Walsh, Winter 1882–83 86
Return to Indian Head, Spring 1883 87
Government "Success," Fall 1883 90
FAMINE, INDIAN HEAD, SPRING 1884 92
BAND AMALGAMATION AND RESERVE SURVEY, 1885 93
EXISTENCE OF CYPRESS HILLS RESERVE DENIED, 1909 94

PART III ISSUES 97

PART IV **ANALYSIS** 99

ISSUE 1: CREATION OF CYPRESS HILLS RESERVE 99
Issue 1(a): Was a Reserve Created Pursuant to the Terms of Treaty 4? 99
Principles of Treaty Interpretation 100
Consultation and Selection 104
The Survey 106
Dewdney's Authority 106
Completed Survey 108
Acceptance of the Survey 110
Issue 1(b): Was a Reserve Created Pursuant to the *Indian Act?* 115
Issue 1(c): Was a *De Facto* Reserve Created? 121
ISSUES 2 AND 3 123
FAIRNESS IN THE RESULT: OUR SUPPLEMENTARY MANDATE 123

PART V **CONCLUSIONS AND RECOMMENDATIONS** 127

APPENDIX

A Carry the Kettle First Nation Cypress Hills Inquiry 129

EXECUTIVE SUMMARY

The Commission has been asked to examine and report on whether the Government of Canada set apart a reserve at the Cypress Hills in southwestern Saskatchewan for the people of the Assiniboine Chiefs Man Who Took the Coat and Long Lodge. The members of the Carry the Kettle First Nation in Saskatchewan are descended from the followers of these two Assiniboine chiefs, who adhered to Treaty 4 at Fort Walsh, in the Cypress Hills, in 1877.

The Cypress Hills are 2,500 square kilometres of flat-topped uplands in southwestern Saskatchewan and southeastern Alberta. Surrounded by relatively barren flat land, they are the highest point in mainland Canada between Labrador and the Rocky Mountains. Various nations, including the Assiniboine, used the Cypress Hills for hunting and gathering in the summer and shelter in the winter, but the Assiniboine have continued to maintain a deep, spiritual connection to the Cypress Hills.

The Commission twice visited the people of the Carry the Kettle First Nation during the course of this inquiry, and on each visit the reverence of these people for their traditional territory was evident. In the days before adhering to Treaty 4, the Assiniboine occupied the Cypress Hills as part of their "homeland" and it was during this period that the Cypress Hills Massacre took place. The massacre was one of the most tragic events in Canadian history. History records how in 1873 Assiniboine men, women, and children were slaughtered in their camp by drunken wolf hunters from Montana in a dispute over stolen horses. To this day, the Carry the Kettle First Nation visits the burial site of their slain members each June 1.

It therefore came as no surprise that the Assiniboine people would seek to preserve their connection to the Cypress Hills when a reserve was selected and apportioned under Treaty 4. It is the creation of this reserve that is at issue in this inquiry. The Carry the Kettle First Nation submitted that, after they verbally selecting the site for their reserve in the Cypress Hills during the summer of 1879, Indian Commissioner Edgar Dewdney dispatched Dominion Land Surveyor Allan Poyntz Patrick to survey the land the Assiniboine selected.

Unable to complete his survey until the summer of 1880 because of inclement weather, A.P. Patrick's completed plan of survey did not in fact arrive in Ottawa until July 1881. In the interim, the Indian Department had decided to relocate the Assiniboine from the Cypress Hills. This inquiry

is therefore devoted to examining the elements of reserve creation pursuant to the terms of Treaty 4, pursuant to the provisions of the *Indian Act*, and finally on a *de facto* basis.

After a thorough and careful examination of all the evidence, the Commission is unable to conclude that a reserve had been created for the Assiniboine Band on any basis. It is our view that the requisite elements to the setting aside of reserves under Treaty 4 included consultation and selection, followed by survey, followed by ultimate acceptance by both the First Nation *and* Canada. The acceptance of the survey could be effected in a formal manner or could be found in the conduct of either party.

The evidence is incontrovertible that Canada dispatched A.P. Patrick to survey a reserve and that the Assiniboine did select land in the Cypress Hills. In our view, the evidence is also clear that the First Nation accepted the land surveyed as its reserve. The absence of evidence of Canada's formal acceptance of Patrick's survey means that we must look to the conduct of the party. In this case, Canada's conduct following the dispatch of surveyor A.P. Patrick leads us to conclude that Canada would not have accepted Patrick's survey when it reached Commissioner Dewdney's office in July 1881 because Canada had decided to relocate the Assiniboine from the Cypress Hills well before July 1881. We therefore conclude that Canada did not accept Patrick's survey of the area selected as a reserve pursuant to Treaty 4.

Examining the provisions of the *Indian Act* reveals that the statute is silent as to the process for creating a reserve. The absence of specific provisions in the *Indian Act* to set apart reserves, however, does not lead us to accept Canada's contention that the setting aside of reserve land is simply a matter of royal prerogative. The absence of a statutory reserve creation process, we believe, directs us to the provisions of the treaty. In our view, the treaties contemplated the involvement of both parties: a true meeting of the minds was fundamental to the selection, surveying, and setting aside of reserves. For the reasons previously explained, we are unable to conclude that the Government of Canada was a party to such consensus.

Finally, the question of whether a reserve had been created on a *de facto* basis – namely, whether Canada by its conduct set aside a reserve, involves a consideration of the same facts. In our view, the totality of the evidence does not demonstrate that the land set aside in the Cypress Hills was a reserve.

Having found that the totality of evidence does not support a finding that a reserve was created for the Assiniboine in the Cypress Hills pursuant to the terms of Treaty 4, the provisions of the *Indian Act*, or on a *de facto* basis, we reluctantly conclude that Canada does not owe an outstanding lawful obligation to the First Nation.

We say reluctantly because the ancestral claim of the Carry the Kettle Band to the Cypress Hills is incontrovertible. It is clear to us that, when reserves were selected and apportioned under Treaty 4, the Assiniboine people sought to preserve their connection to the Cypress Hills. Although many other First Nations sought sanctuary in the Cypress Hills, the Carry the Kettle Band repeatedly fought the government's attempts to relocate it to other lands. Eventually, the Carry the Kettle Band did succumb to this pressure, but it did so reluctantly and only when faced with starvation as an alternative.

In this inquiry we rely upon our supplementary mandate to draw to government's attention the circumstances of this case because we consider the outcome unfair, even though these circumstances do not give rise to an outstanding obligation. In the final analysis, we are unable to find that a reserve has been created for the Assiniboine. However, this conclusion does not do justice to the First Nation for it ignores the historical connection that has existed between the Carry the Kettle people and the Cypress Hills since time immemorial, a connection that was so tragically severed. In this report, we examine the history of the Carry the Kettle First Nation in the Cypress Hills and their forced removal at the hands of the government of the day.

PART I

INTRODUCTION

BACKGROUND TO THE INQUIRY

In 1992, the Carry the Kettle First Nation submitted a specific claim to the Department of Indian Affairs and Northern Development (DIAND) alleging that a reserve surveyed for the Assiniboine in the Cypress Hills had been wrongfully taken because the surrender provisions of the *Indian Act* were not complied with.

Based on a preliminary analysis of the submission, Canada rejected the claim in a letter dated December 8, 1993. Jane-Anne Manson, Specific Claims Branch, stated in the letter that "a reserve was not created in 1880, either legally or de facto, and consequently the specific claim is not recommended for negotiation."[1] On August 30, 1996, the First Nation requested that the Indian Claims Commission (ICC) conduct an inquiry into the rejection of this claim.

During the course of the inquiry, Canada provided additional particulars as to the basis for its rejection of the claim. Canada explained:

> If the Carry the Kettle First Nation is not estopped from bringing this claim, it is Canada's position that a reserve was never created in the Cypress Hills. Although a reserve in the Cypress Hills was surveyed in 1880, it is Canada's view that this is insufficient for a reserve to be created. It is our position that the Royal Prerogative to set aside reserve lands was never exercised in relation to a reserve in the Cypress Hills. Furthermore, the evidence does not support a finding that a reserve in the Cypress Hills was ever set aside on a *de facto* basis.[2]

Although the issue of estoppel was raised by Canada during the inquiry's preliminary stages, Canada later advised that it would not be relying on estoppel.

---

1 Jane-Anne Manson, Assistant Negotiator, DIAND, to Stephen Pillipow, Counsel for Carry the Kettle First Nation, December 8, 1993 (ICC file 2107-19-3).

2 Rosemary Irwin, Counsel, Specific Claims Branch, DIAND, to Kathleen Lickers, Legal Counsel, Indian Claims Commission, March 4, 1997 (ICC file 2107-19-3).

MANDATE OF THE INDIAN CLAIMS COMMISSION

The mandate of this Commission is set out in federal Orders in Council providing the Commissioners with the authority to conduct public inquiries into specific claims and to issue reports on "whether a claimant has a valid claim for negotiation under the [Specific Claims] Policy where that claim has already been rejected by the Minister."[3] This Policy, outlined in the 1982 booklet entitled *Outstanding Business: A Native Claims Policy – Specific Claims*, states that Canada will accept claims for negotiation where they disclose an outstanding "lawful obligation" on the part of the federal government.[4] The term "lawful obligation" is defined in *Outstanding Business* as follows:

> The government's policy on specific claims is that it will recognize claims by Indian bands which disclose an outstanding "lawful obligation", i.e., an obligation derived from the law on the part of the federal government.
>
> A lawful obligation may arise in any of the following circumstances:
>
> i) The non-fulfillment of a treaty or agreement between Indians and the Crown.
> ii) A breach of obligation arising out of the *Indian Act* or other statutes pertaining to Indians and the regulations thereunder.
> iii) A breach of an obligation arising out of government administration of Indian funds or other assets.
> iv) An illegal disposition of Indian land.

Furthermore, Canada is prepared to consider claims based on the following circumstances:

> i) Failure to provide compensation for reserve lands taken or damaged by the federal government or any of its agencies under authority.
> ii) Fraud in connection with the acquisition or disposition of Indian reserve land by employees or agents of the federal government, in cases where the fraud can be clearly demonstrated.

It should also be explained that, when the original mandate of the Commission was still under discussion, Tom Siddon, then Minister of Indian Affairs and Northern Development, wrote to then

---

[3] Commission issued September 1, 1992, pursuant to Order in Council PC 1992-1730, July 27, 1992, amending the Commission issued to Chief Commissioner Harry S. LaForme on August 12, 1991, pursuant to Order in Council PC 1991-1329, July 15, 1991.

[4] DIAND, *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982), 20; reprinted in (1994) 1 ICCP 171-85 (hereinafter *Outstanding Business*).

National Chief Ovide Mercredi of the Assembly of First Nations setting out thebasis for what the Commission has previously referred to as its "supplementary mandate":

> If, in carrying out its review, the Commission concludes that the policy was implemented correctly but the outcome is nonetheless unfair, I would again welcome its recommendations on how to proceed.[5]

In an October 1993 letter to the Commission, the Minister of Indian Affairs, Pauline Browes, reiterated the position taken by her predecessor. Minister Browes's letter makes two key points in relation to the Commission's jurisdiction:

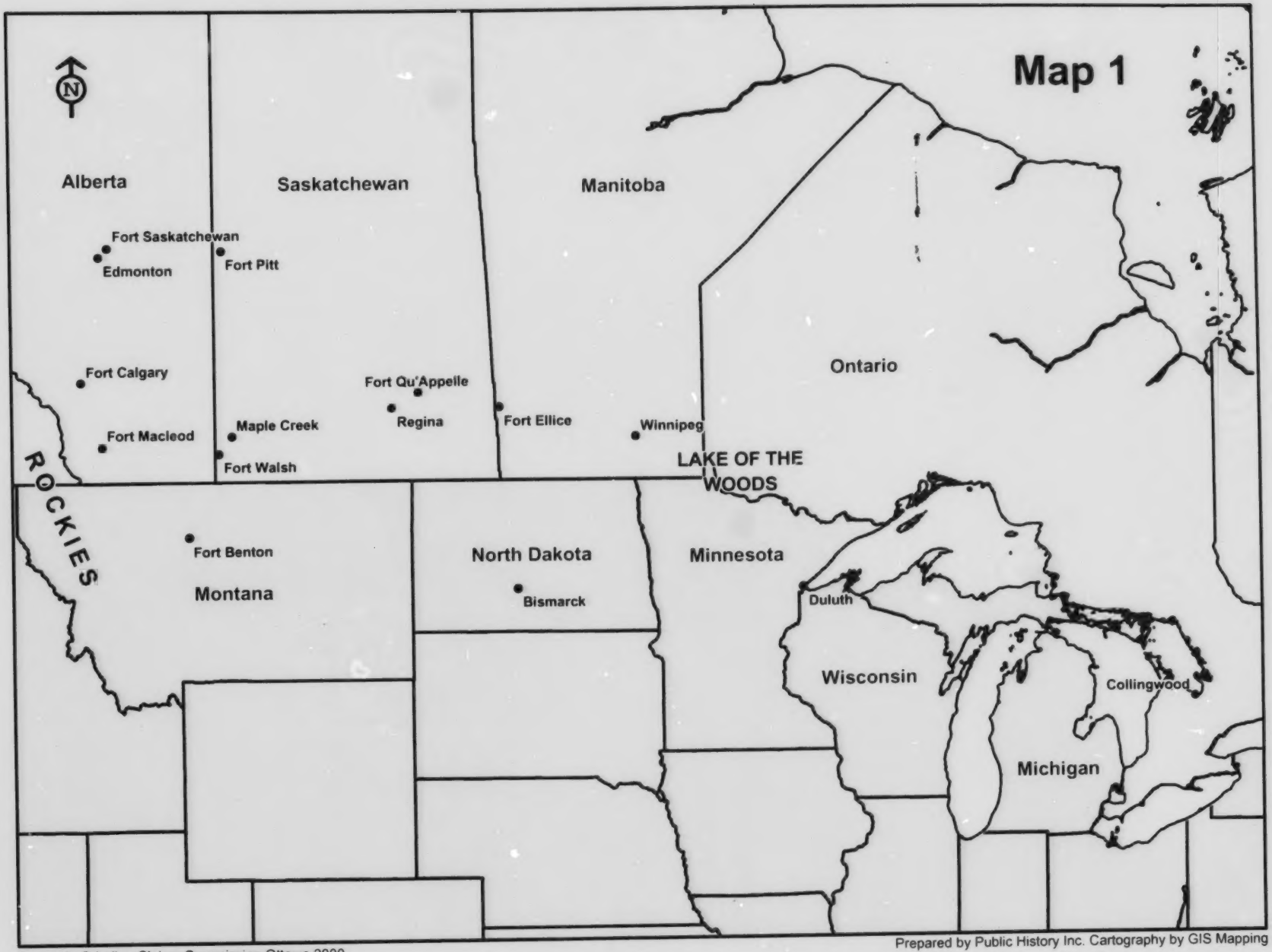
> (1) I expect to accept the Commission's recommendations where they fall within the Specific Claims Policy; (2) I would welcome the Commission's recommendations on how to proceed in cases where the Commission concluded that the policy had been implemented correctly but the outcome was nevertheless unfair ...[6]

The Commission has been asked to inquire into and report on whether the Carry the Kettle First Nation has a valid claim for negotiation pursuant to the Specific Claims Policy. This report contains our findings and recommendations on the merits of this claim.

---

5 Tom Siddon, Minister of Indian Affairs and Northern Development, to Ovide Mercredi, National Chief, Assembly of First Nations, November 22, 1991, reprinted in (1995) 3 ICCP 244-46.

6 Pauline Browes, Minister of Indian Affairs and Northern Development, to Harry S. LaForme, Chief Commissioner, Indian Claims Commission, October 13, 1993, reprinted in (1995) 3 ICCP 242-43.



Copyright © Indian Claims Commission Ottawa 2000

Prepared by Public History Inc. Cartography by GIS Mapping

PART II

HISTORICAL BACKGROUND

The historical evidence in relation to the Carry the Kettle First Nation's claim, reviewed in this part, includes several volumes of documentary evidence and the oral evidence provided by members of the First Nation at two community sessions held in the Cypress Hills. The Commission also received sworn declarations of Olive Gordon, a report prepared by Dr Kenneth Ryan, a research report prepared by Jayme Benson on behalf of the Carry the Kettle First Nation, a report by Dr David Sauchyn, a report prepared by Jim Gallo on behalf of DIAND, Specific Claims, and a report prepared by Daniel Babiuk on behalf of the First Nation.

The Commission has also considered the written submissions of the First Nation and Canada, in addition to hearing oral submissions from legal counsel to the parties on May 5, 1999. The documentary evidence, written submissions, transcripts from the community sessions and oral submissions, and the balance of the record before the Commission in this inquiry are referenced in Appendix A to this Report.

CARRY THE KETTLE FIRST NATION

Carry the Kettle First Nation was once known as the Assiniboine Band. Its present reserve, Assiniboine Indian Reserve (IR) 76, is near Indian Head, Saskatchewan, 80 kilometres east of Regina. The Chiefs and headmen of the Assiniboine Band were associated with the Cypress Hills in 1877, when they adhered to Treaty 4, and in 1879, when they decided to select a reserve. They were Man Who Took the Coat, Long Lodge Tepee Hoska, Wich-a-wos-taka, and Poor Man. Man Who Took the Coat, Long Lodge, and their respective followers were settled at Indian Head by 1883. In 1885, after Long Lodge died, his group amalgamated with that of Man Who Took the Coat.[7]

---

[7] Man Who Took the Coat thus emerged as the predominant Chief with respect to the origins of the Carry the Kettle Band. The Commissioners were reminded, however, at the May 30, 1997, community session that an Assiniboine Chief was not an "absolute ruler." Dr Kenneth Ryan's discourse on "Assiniboine Polity: Traditional Assiniboine Government" made the point that an Assiniboine Chief "had no authority to act upon important Band business without first taking it to council" (ICC Exhibit 5, p. 14). This restriction was also stated in elders' testimonies prepared for the October 1997 community session (ICC Exhibit 9, question 2, p. 2), which elaborated on the requirements for leadership.

Group around drum, including Carry the Kettle, Take the Coat, and Stabbed Many Times
(ICC Exhibit 8, photo 6)
Provincial Archives of Manitoba EM 464

Chief Carry the Kettle on horseback
(ICC Exhibit 8, photo 3)
Provincial Archives of Manitoba EM 28

Members of Carry the Kettle First Nation consider themselves descendants of Man Who Took the Coat and Long Lodge.[8]

Man Who Took the Coat remained Chief until his death in 1891. At that time he was succeeded by his brother Carry the Kettle. Chief Carry the Kettle's name derives from a childhood incident when he carried a kettle while his band was being raided by enemies.[9]

Assiniboine Use and Occupation of the Cypress Hills

The Cypress Hills are 2,500 square kilometres of flat-topped uplands in southwestern Saskatchewan and southeastern Alberta. Surrounded by relatively barren flat land, they are the highest point in mainland Canada between Labrador and the Rocky Mountains. Being "a humid island in the semiarid prairies," they possess a rich mixture of plant and animal life that has supported human habitation for some 7,000 years.[10]

The Cypress Hills were frequented by various nations, including the Blackfoot, Cree, Gros Ventres, Saulteaux, and Assiniboine, nations that were sometimes friendly and sometimes mutually hostile.[11] Territorial disagreement did not preclude natural resource use by the contending nations,[12] and the fact that the Cypress Hills were not occupied exclusively by the Assiniboine Band is not at issue in this inquiry.

Historically, as many as 33 Assiniboine bands comprised the Assiniboine Nation.[13] Over the centuries the ancestors of these bands gradually migrated north and west from the headwaters of the

---

8 ICC Transcript, May 30, 1997, p. 30 (Kaye Thompson); "Summary of Cypress Hills Claim," presentation of Elder Kaye Thompson at community session 1, May 30, 1997, Maple Creek, Saskatchewan (ICC Exhibit 7, p. 1).

9 "How Chief Carry the Kettle Got His Name" (ICC Exhibit 9, Document prepared by Carry the Kettle First Nation and displayed at community session 2, October 20, 1997).

10 "Cypress Hills," *The Canadian Encyclopedia*, 2nd ed. (Edmonton: Hurtig, 1988), 560.

11 Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, pp. 5-7).

12 Barry Potyondi, *In Palliser's Triangle: Living in the Grasslands, 1850-1930* (Saskatoon: Purich Publishing, 1995), 19-21.

13 Kenneth Ryan, "Assiniboine Polity: Traditional Assiniboine Government," no date (ICC Exhibit 5, pp. 4-6).

Mississippi River until they occupied a vast territory ranging from Lake Winnipeg to the Rockies.[14] "At the peak of their power their territory ranged from the Saskatchewan and Assiniboine river valleys in Canada to the region North of the Milk and Missouri rivers in the US."[15]

Both the Cypress Hills and the Wood Mountains, southeast of the Cypress Hills, were used and occupied by several nations including the Assiniboine.[16] In a report for Canada in this inquiry, Jim Gallo linked Man Who Took the Coat with the Wood Mountains, but also concluded that, "by the early 1870s, the Wood Mountain Assiniboine frequented the Cypress Hills as winter camp sites and hunting grounds."[17] The parties to this inquiry agree that the Assiniboine were using the Cypress Hills prior to Treaty 4 and that they took treaty there in 1877.[18]

Olive Gordon, the daughter of Dan Kennedy, author of *Recollections of an Assiniboine Chief,* asserted that her father had always maintained that the Cypress Hills were the "permanent wintering ground of the Assiniboine tribes."[19] They were also their "sacred grounds" for ceremonies such as the Sun Dance in the spring.[20]

The presence of the lodgepole pine is likely one of the reasons so many nations were attracted to the Cypress Hills. The Cypress Hills mark the easternmost "outlier site" of the lodgepole pine, a

---

14 ICC Transcript, May 30, 1997, p. 30 (Kaye Thompson); "Summary of Cypress Hills Claim," presentation of Elder Kaye Thompson at community session 1, May 30, 1997, Maple Creek, Saskatchewan, (ICC Exhibit 7, p. 1); Ian A.L. Getty, "Assiniboine," *The Canadian Encyclopedia,* 2nd ed. (Edmonton: Hurtig, 1988), 6; Bill Yenne, *Encyclopedia of North American Tribes: A Comprehensive Study of Tribes from the Abitibi to the Zuni* (New York/Avenel, New Jersey: Crescent Books, 1986), 20-21; David Reed Miller, "Assiniboine," *Encyclopedia of North American Indians*, ed. Frederick E. Hoxie (Boston/New York: Houghton Mifflin Company, 1996), 56-57.

15 Ian A.L. Getty, "Assiniboine," *The Canadian Encyclopedia,* 2nd ed. (Edmonton: Hurtig, 1988), 136.

16 Thomas R. Ross and Tyrel G. Moore, eds., *A Cultural Geography of North American Indians* (Boulder: Westview Press, 1987), 69.

17 Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, pp. 14-15).

18 Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," prepared for Federation of Saskatchewan Indian Nations, November 27, 1998 (ICC Exhibit 11, pt I, pp. 6-12).

19 Statutory Declaration of Olive Gordon, November 26, 1998 (ICC Exhibit 12, p. 2).

20 Statutory Declaration of Olive Gordon, November 26, 1998 (ICC Exhibit 12, p. 2).

tree that is found "from the Yukon through interior British Columbia, into western Alberta and southward."[21] The Hills were named after this pine, once commonly called "cypress."

Ancestral Connection to the Cypress Hills

The Commission twice visited the people of the Carry the Kettle First Nation to hear their oral history. The first visit took place in May 1997 at Maple Creek, Saskatchewan, and coincided with the Band's annual pilgrimage to the burial site of the Cypress Hills Massacre. We refer to the events of the 1873 massacre later in this report. It was at this first visit that Elder Kaye Thompson spoke of the Assiniboine people's connection to a territory they have always recognized as their "blessed homeland." She spoke about the "mountain by itself" (Wazixa-Wedum) as a "refuge," a source of abundant game and medicines, a positive influence on climatic conditions, the highest point bringing her people "closer to god."[22] She explained that the Cypress Hills were central to the life of the Assiniboine Band:

> This is our homeland, a place which sings harmoniously of such great and ancient ceremonies: Wa-hi-ki-ub, the calling of the spirits; the vision quest, important to gain more knowledge of the dreams; maga-ju wacipi, the raindance; hawi wacipi or wiwanka wacipi, the sundance, performed every year in the summer. It was in this area that the messenger to the great spirit, the mighty eagle, glided in perseverance throughout the open heavens and from whom we acquired the eagle feathers which endowed such significance in our cultural societies. It was the one area from which we could acquire our lodge pole, which was pertinent to the assembling of our lodges, our dwellings, our ceremonial structures. This area insured the continuity of our way of life, our way of existence.[23]

---

21 John Laird Farrar, *Trees in Canada* (Markham: Canadian Forest Service/Fitzhenry & Whiteside, 1995), 3, 60-61.

22 "Summary of Cypress Hills Claim," presentation of Elder Kaye Thompson at community session 1, May 30, 1997, Maple Creek, Saskatchewan (ICC Exhibit 7, pp. 2-3).

23 ICC Transcript, May 30, 1997, p. 30 (Kaye Thompson); "Summary of Cypress Hills Claim," presentation of Elder Kaye Thompson at community session 1, May 30, 1997, Maple Creek, Saskatchewan (ICC Exhibit 7, p. 1).

Camp of Assiniboine Indians
Boundary Commission (1872-74) 204 Collection
Provincial Archives of Manitoba N14128

Through each generation the spiritual connection to the Cypress Hills is transferred to the people of the Carry the Kettle First Nation. The reverence with which the people speak of their territory is evident:

> Our heart is not here, our heart is in the Cypress Hills ... Our medicine people continued to return to this area for the purpose of acquiring needed roots, plants and paint. Pipe keepers have continued to offer the perennial ceremonies required for our dead relatives whom are left behind in the Cypress Hills ... The Cypress Hills is our area. We, as a people, have only really strong meaning in this place. Our cultural and spiritual health depends greatly on re-establishing a communication with this place ... Our people paid dearly for this land in Cypress Hills, through the blood of our dead relatives which has stained the grounds. After seeing the Cypress Hills, why would we want to move to the Indian Head area?[24]

---

[24] ICC Transcript, May 30, 1997, p. 35 (Kaye Thompson).

In recognition of their connection to this territory, the elders explained their annual pilgrimage to the burial site constructed in the Cypress Hills after the massacre of their ancestors in 1873:

> Our people highly respect their burial sites. The burial site is holy land. The spirits around that place, in Cypress Hills, where our dead relatives were left behind. These ones, they say, kept the reserve. That's where they're laying.[25]

"Big Darkness," a medicine man
(ICC Exhibit 8, photo 4)
Provincial Archives of Manitoba EM 6

The massacre of the Assiniboine clearly evidences their occupation of the Cypress Hills as their "blessed homeland" in the days before treaty. When the treaty commissioners eventually arrived, Elder Kaye Thompson described the people's understanding of the treaty:

> The treaty is a sacred agreement made between two nations, of which mankind made an oath of peace to God. Our people will not defy the great spirit. Our children will continue to be taught that this peace must prevail. Our First Nation and the Queen's Nation agree to put down our guns and through our traditions we will continue to teach our children that they must live in harmony. This treaty will never be given up. We were told never to sell anything that belonged to the treaty. For our people, today and in past generations, this concept was integral to our thought. That is why we cannot justify the notion that we are not permitted to live upon and occupy our reserve land in the Cypress Hills. The treaty indicated the government would look

---

25 ICC Transcript, May 30, 1997, pp. 24-25 (Kaye Thompson).

> after our people and create reserves in our traditional territories. The treaty was signed and our reserve was selected at the head of the mountain. Our people had lived in this sanctified area for centuries. Like the Sioux Indians whom continually go back to the Black Hills of South Dakota, for us, the Assiniboine, we find this unique bond with the Cypress Hills. We were given this land through the spiritual way.[26]

As the words of Elder Andrew Rider clearly indicate, the treaty is a sacred document and required the Crown to consult with the First Nation on the selection of its reserve. That the First Nation understood its people selected a reserve in the Cypress Hills was expressed by Andrew Rider:

> We are told by our forefathers that the Queen asked us to select a reserve in our traditional homeland, and the signing of the treaty this is what our leaders have done after consulting with our people, our traditional way. We recall the specific stories how our chiefs and warriors, men of leadership went with the Queen's men to select their traditional homeland. They always inhabited, even before treaty, the land that our chief chose for significance to our people to survive. We have done this from generation to generation.[27]

The Commission has been asked to inquire into the events surrounding the First Nation's selection of reserve land in the Cypress Hills and it is to those events that we will now turn.

Cypress Hills Massacre[28]

In the spring of 1873, a party of Cree stole horses from some American wolfers in Montana and set in motion the chain of events that culminated in the massacre of a group of Assiniboine a few weeks later in the Cypress Hills. The wolfers tried to follow the Cree to retrieve their horses, but lost the trail: the Cree headed towards Fort Whoop-Up in southern Alberta and the wolfers went the other way, arriving at the trading post of Abel Farwell in the Cypress Hills on the last day of May 1873.

---

26 ICC Transcript, May 30, 1997, p. 29 (Kaye Thompson).

27 ICC Transcript, October 20, 1997, p. 17 (Andrew Rider).

28 Most of the information about the Cypress Hills Massacre is taken from Walter Hildebrandt and Brian Hubner, *The Cypress Hill: The Land and Its People* (Saskatoon: Purich Publishing, 1994), chapter 4, and Dan Kennedy, *Recollections of an Assiniboine Chief*, edited and with an introduction by James R. Stevens (Toronto: McClelland and Stewart, 1972), 42-47.

At the time, three groups of Assiniboine were camped on the other side of Battle Creek, a short distance from Farwell's post. One group, under Chief Hunkajuka (Little Chief), were recent arrivals in the area, having made an arduous 480 kilometre trek from their camp on Battle River, looking for food to feed its starving members. Dan Kennedy described this trek:

> The hunting was good and meat was plentiful [at Battle River], but, as the winter wore on, buffalo was getting scarce, until, in the latter part of Amhanskam (Long Day Moon) February, the buffalo disappeared completely. They had to break camp and disperse. Chief Hankajuka [Little Chief] decided to lead his band of Assiniboines southward, in an effort to reach the Cypress Hills, a distance of almost three hundred miles as the crow flies. But the distance was even greater when the odds were all stacked up against them. However, there was no choice but to face the inescapable facts and meet the challenge.
>
> In their mad race with death across the blizzard swept plains, they ate their horses, their dogs and even the flint hides were roasted over the fires to be eaten. Whenever they came across their old camp sites they dug up the cast off bones from underneath the snow and were crushed and boiled for broth to sustain them.
>
> Their fight for survival was at along last over, so it seemed, when they reached Cypress Hills. The snow was practically all gone except for the snow drifts, which dotted the ravines and coulees, and there was every indication the buffalo were near.
>
> Cuwiknak eyaku (Took the Coat) was the lucky hunter to kill the first buffalo. From then on, hunting was good and their winter's ordeal was just a sad memory; sad because their trail was strewn with thirty of their kinfolk who perished from hunger and cold.[29]

Little Chief was soon joined by Chiefs Minashinayen and Inihan Kinyen and their followers, making an encampment of about 300 people.

Eashappie, son of Chief Inihan Kinyen and a Cypress Hills Massacre survivor, told the story of what happened on June 1, 1873:

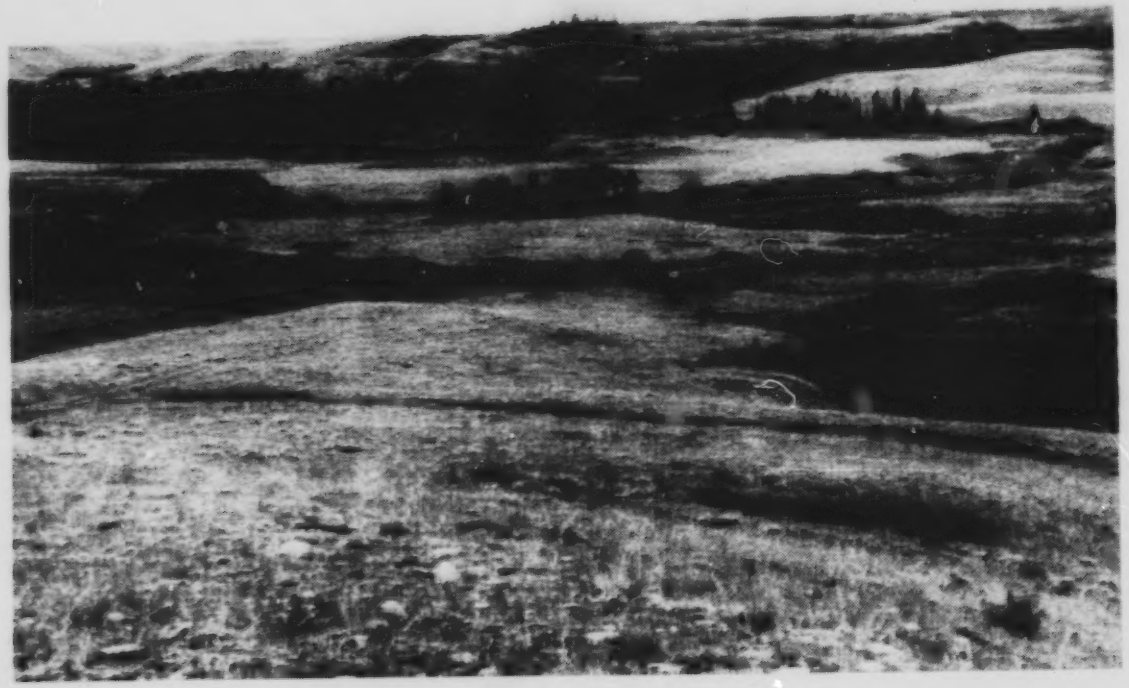
> In the morning of the fateful day, my father had just returned from his visit to the Whiskey Traders, with the news of the arrival of ten American horsemen and the warning he had received that these men were looking for trouble.

---

[29] Dan Kennedy, draft for his book, "Recollections of an Indian Chief," attached to Supplementary Statutory Declaration of Olive Gordon, January 5, 1999 (ICC Exhibit 16).

Immediately he instructed his followers to break camp, but 'Wincanahe,' an outspoken Indian, ridiculed and scoffed at their panic, and bluffed them into staying encamped.

That morning whiskey flowed like water in the camps and by mid-day the tribesmen were all hopelessly drunk. Inside of our tent my father lay in a stupor and we employed every artifice, including herbs, to revive him to consciousness. I know the other camps were also in the same predicament, working frantically over their men, but it was hopeless; we were doomed. We were left defenceless.[30]



Area of Cypress Hills Massacre, Battle Creek, Saskatchewan [ca. 1971]
Glenbow Archives NA-2446-12

[30] Dan Kennedy, *Recollections of an Assiniboine Chief*, edited and with an introduction by James R. Stevens (Toronto: McClelland and Stewart, 1972), 45.

Estimates of the number of Assiniboine who died in the Cypress Hills Massacre range from 25[31] to 80,[32] but the deaths were only part of the atrocities of the day. Elder Kaye Thompson told us more about the "cruel bloodbath" that occurred:

> The massacre's onslaught occurred when our people were given poisoned whisky. Our people were slaughtered and killed like wild animals. The children had been abducted from their teepees, and then clutching them by their feet they were beaten savagely upon the ground. The women were brutally raped throughout the night, used and cast off. It has been told that a group of men had continually raped women all night in a camp near the massacre site. Our old people were beaten and left to die. The bones of our dead ancestors were left scorching the prairies, instilling antagonizing threats of fear into our forefathers of the white man's bitterness.[33]

ESTABLISHING ORDER IN THE CYPRESS HILLS, FORT WALSH, 1875 TO 1883

The North-West Mounted Police (NWMP), a paramilitary police force, was set up in 1873 as a result of the massacre and the general conditions to assert Canadian law and sovereignty in the North-West.[34] Troops were dispatched to "Whoop-Up" country, and Fort Macleod and Fort Walsh were constructed on either side of what later became the Alberta/Saskatchewan border.[35] In 1875, the *North-West Territories Act* was passed to provide for the establishment of government institutions in the region.[36]

---

31 Alexander Morris, *The Treaties of Canada with the Indians* (Toronto, 1880; reprint Toronto: Coles, 1971), 98.

32 Dan Kennedy, *Recollections of an Assiniboine Chief*, edited and with an introduction by James R. Stevens (Toronto: McClelland and Stewart, 1972), 46.

33 ICC Transcript, May 30, 1997, pp. 24-25 (Kaye Thompson).

34 "North-West Mounted Police," *The Canadian Encyclopedia*, 2nd ed. (Edmonton: Hurtig, 1988), 1511.

35 David Reed Miller, "Assiniboine," *Encyclopedia of North American Indians*, ed. Frederick E. Hoxie (Boston/New York: Houghton Mifflin Company), 57.

36 "North-West Territories Act," *The Canadian Encyclopedia*, 2nd ed. (Edmonton: Hurtig 1988), 1513.

Superintendent James Morrow Walsh's troops began building the fort that bore his name in the centre of the Cypress Hills, near the site of the Cypress Hills Massacre, in spring 1875.[37] During the late 1870s and early 1880s, the period during which the buffalo were being eliminated, Fort Walsh played an important role in the history of the North-West. Cecil Denny, an original member of the NWMP who served as Indian agent at Fort Walsh in 1881–82, described the circumstances as follows:

> This region was infested by whiskey traders. It was a favourite hunting ground for many Indian tribes, and they were continually coming in conflict. Horse stealing was rife. Briefly, it was about as lawless a section as could be found in the territory. It was to put an end to this state of affairs that Fort Walsh was established in the summer of 1875. Major Walsh and his troop soon stamped out the whiskey trade, and did much to gain the goodwill of the various Indian tribes that were accustomed to visit the fort.[38]

Fort Walsh was near the American boundary; therefore, many Indians from the United States hunted in the vicinity. Denny believed that stationing the NWMP at Forts Walsh and Macleod likely "prevented the American Indians from using Canadian soil as a base of operations for prosecuting the war with the United States troops."[39]

In the United States, the southernmost herds of buffalo had been destroyed by 1875 and those on the American Plains were eliminated by 1883. Buffalo had ranged across the future states of Mississippi, Tennessee, Kentucky, the Carolinas, Virginia, Georgia, Ohio, Indiana, and Illinois in

---

37 "Cypress Hills," *The Canadian Encyclopedia*, 2nd. ed. (Edmonton: Hurtig, 1988), 560. Walter Hildebrandt and Brian Hubner, *The Cypress Hills: The Land and Its People* (Saskatoon: Purich Publishing, 1994), 69-73. On the subject of how many died in the Cypress Hills Massacre, Hildebrandt and Hubner say numbers are "uncertain."

38 Sir Cecil E. Denny, *The Law Marches West*, ed. W.B. Cameron, with a foreword by A.C. Rutherford (Toronto: J.M. Dent and Sons, 1939), 76.

39 Sir Cecil E. Denny, *The Law Marches West*, ed. W.B. Cameron, with a foreword by A.C. Rutherford (Toronto: J.M. Dent and Sons, 1939), 97. In the United States, Indians' treaty rights were being violated by actions such as prospectors entering the Black Hills. Once the Sioux and Cheyenne had retaliated by wiping out Lt.-Col. Custer and the 7th Cavalry on June 25, 1876, thousands of Sioux fled north from Montana. NWMP at Fort Walsh therefore became involved in mediating between the Sioux and the various other tribes in the area.

the 1700s. They were slaughtered in the name of progress and civilization in the United States, and finally disappeared from Canada, owing to "economic exploitation," in the late 1880s.[40]

After 1873, no large numbers of buffalo were seen in the Wood Mountain district. In 1875–76, only straggling herds were found east of the Cypress Hills.[41] For the aboriginal peoples of the area, travelling from southwestern Saskatchewan to hunt buffalo in Montana around the Milk River was a necessary and often futile search for food.

The federal presence at Fort Walsh, in the form of the NWMP, survey parties, and the Indian administration, generated a lively economy in the Cypress Hills at least for a few years. The fort attracted retail merchants, Indians, and Métis and it facilitated the conversion of treaty annuities into goods.[42] By 1883, when Fort Walsh was abandoned, treaties had been made throughout the Canadian prairies, the Canadian Pacific Railway had been built to Calgary, and the Assiniboine Band had been settled at Indian Head.[43]

TREATY 4, 1874

When the Dominion of Canada acquired Rupert's Land from the Hudson's Bay Company (HBC) in 1870, it intended to promote western settlement and to construct a railway to the Pacific, using western natural resources and lands to pay for it.[44] To open the required lands, the government

---

40 Valerius Geist, *Buffalo Nation: History and Legend of the North American Bison* (Saskatoon: Fifth House Ltd., 1996), 97-98.

41 Barry Potyondi, *In Palliser's Triangle: Living in the Grasslands, 1850-1930* (Saskatoon: Purich Publishing, 1995), 31.

42 Walter Hildebrandt and Brian Hubner, *The Cypress Hills: The Land and Its People* (Saskatoon: Purich Publishing, 1994), 78.

43 "Fort Walsh," *The Canadian Encyclopedia*, 2nd ed. (Edmonton: Hurtig, 1988), 823, and Walter Hildebrandt and Brian Hubner, *The Cypress Hills: The Land and Its People* (Saskatoon: Purich Publishing, 1994), 114. By 1883, the majority of the Sioux had returned to the United States. After Fort Walsh was abandoned, non-aboriginal settlers ranched the property until the 1940s, when the RCMP (formerly NWMP) reacquired it for raising horses. The Fort Walsh property was transferred to Parks Canada in 1968. It became a national historic site of 650 hectares (1,605 acres) in 1972.

44 "Dominion Lands Policy" and "Railway History," *The Canadian Encyclopedia*, 2nd ed. (Edmonton: Hurtig, 1988), 612 and 1822. In 1871, British Columbia entered Confederation on the promise of a transcontinental rail line being completed within 10 years.

initiated, in 1871, a series of treaties with the Indian occupants of the southern section of the North-West Territories.

Cypress Hills, NWMP Camp [c. 1878]
Zachary M. Hamilton, M 10 Collection
Provincial Archives of Manitoba N13818

By this time, Indians from Lake of the Woods to the Rockies were eager for a means to protect their own interests.[45] They were concerned about the consequences of the sale of their lands by the HBC, developments in the United States and Canada, the depletion of animals on which they depended, and encroachment by surveyors and settlers.[46] By 1873, Treaties 1, 2, and 3 took in an area

---

[45] John Leonard Taylor, *Treaty Research Report: Treaty Four (1874)* (Ottawa: Indian and Northern Affairs Canada, 1985), vi-vii.

[46] John Leonard Taylor, *Treaty Research Report: Treaty Four (1874)* (Ottawa: Indian and Northern Affairs Canada, 1985), 4.

along the international border that now runs almost from Thunder Bay, Ontario, to Estevan, Saskatchewan, at an average depth of some 300 kilometres from the border.

The rapid rate at which buffalo were disappearing at this time impoverished the prairie Indians. It also raised fears of starving Indians with the government and settlers. Lieutenant-Governor Alexander Morris, who had negotiated Treaty 3, was ready to make another treaty further west and promoted the idea of sending mounted police to control the activities of illicit traders.[47] On receiving assurances that Indians in the Qu'Appelle Valley region were willing to treat, he secured approval to proceed there.[48]

On September 8, 1874, the treaty party arrived under military escort at Fort Qu'Appelle, 70 kilometres northeast of Regina.[49] The party consisted of Lieutenant-Governor Morris as spokesperson; David Laird, Minister of the Interior and Indian Commissioner; and William J. Christie, formerly of the HBC's Saskatchewan District and soon to be Indian Commissioner for the North-West Territories.[50] Discussions went on for several days, partly because of tribal differences among the Cree, Saulteaux, and Assiniboine.[51] The Indians sought answers to their questions and concerns about the changeover from HBC authority; for his part, Morris was bent on securing a treaty for Canada without delay:

> The Company and its relationship to the land seemed to be the focal point of the dissension amongst the Indians themselves as well as the barrier to making a treaty. Morris frequently showed insight in understanding the Indian viewpoint, but was becoming impatient with the persistent questioning about the Company. He did not

---

47 John Leonard Taylor, *Treaty Research Report: Treaty Four (1874)* (Ottawa: Indian and Northern Affairs Canada, 1985), 1-3. Alexander Morris was appointed lieutenant-governor of Manitoba and the North-West Territories in 1872; he was the senior government negotiator of Treaties 3 to 6.

48 John Leonard Taylor, *Treaty Research Report: Treaty Four (1874)* (Ottawa: Indian and Northern Affairs Canada, 1985), 4-9.

49 "Fort Qu'Appelle," *The Canadian Encyclopedia*, 2nd ed. (Edmonton: Hurtig, 1988). Fort Qu'Appelle was an HBC post at the site of an Anglican mission that had begun there in 1854. From 1875 it was an NWMP outpost.

50 John Leonard Taylor, *Treaty Research Report: Treaty Four (1874)* (Ottawa: Indian and Northern Affairs Canada, 1985), 8.

51 John Leonard Taylor, *Treaty Research Report: Treaty Four (1874)* (Ottawa: Indian and Northern Affairs Canada, 1985), 9.

> see the connection between the Indians' concern about the Company and what they were doing in attempting to make a treaty. The Indians saw the country as their own which the Company had no right to sell. Morris saw the land as belonging to the Queen. She had paid the Company for whatever rights they had held there and was now prepared to extinguish aboriginal title as well. This basic misunderstanding about the land cession aspect of the treaty was never brought to the surface and resolved in the Treaty Four discussions, although it lay behind the questioning which occupied most of the time.[52]

To win the Indians over, Morris began the treaty negotiations by offering agricultural assistance: "When fish are scarce and the buffalo are not plentiful she [the Queen] would like to help you to put something in the land."[53]

On September 15, 1874, despite the divisions between the Cree and the Saulteaux and the absence of most of the Assiniboine at the negotiations, the terms of the treaty were finalized.[54] Treaty 4, also known as the "Qu'Appelle Treaty," saw the "Cree and Saulteaux Tribes of Indians, and all other the Indians [sic] inhabiting the district," cede a 194,000 square kilometre area (75,000 square miles),[55] encompassing most of the Assiniboine's traditional territories on the Canadian side of the border. In today's terms, Treaty 4 covered nearly all of southern Saskatchewan to the international border, extending as far west as Medicine Hat, Alberta, and as far east as Lake Winnipegosis in Manitoba. At its centre was Regina, Saskatchewan.[56] There was little discussion about reserve lands during the six-day treaty conference. Morris simply indicated: "When you are ready to plant seed the Queen's men will lay off Reserves so as to give a square mile to everyfamily of five persons, and on commencing to farm the Queen will give to every family cultivating the soil two hoes, one spade,

---

52 John Leonard Taylor, *Treaty Research Report: Treaty Four (1874)* (Ottawa: Indian and Northern Affairs Canada, 1985), 13-14.

53 John Leonard Taylor, *Treaty Research Report: Treaty Four (1874)* (Ottawa: Indian and Northern Affairs Canada, 1985), 11.

54 John Leonard Taylor, *Treaty Research Report: Treaty Four (1874)* (Ottawa: Indian and Northern Affairs Canada, 1985), 18-20.

55 Alexander Morris, *The Treaties of Canada with the Indians* (Toronto, 1880; reprint Toronto: Coles, 1971), 77 (ICC Documents, p. 1).

56 Canada, *The Canadian Indian* (Ottawa: DIAND, 1990), 58.

one scythe for cutting the grain, one axe and plough, enough of seed wheat, barley, oats and potatoes to plant in the land they get ready."[57]

According to Treaty 4, Indian reserves were to be selected in consultation with the Indians concerned and were not to be disposed of without their consent:

> Her Majesty the Queen hereby agrees, through the said Commissioners, to assign reserves for said Indians, such reserves to be *selected* by officers [of] Her Majesty's Government of the Dominion of Canada appointed for that purpose, *after conference with each band of Indians*, and to be of sufficient area to allow one square mile for each family of five ... [and] that the aforesaid reserves of land ... may be sold, leased or otherwise *disposed of* by the said Government for the use and benefit of the said Indians, *with the consent of the Indians* entitled thereto first had and obtained ...[58]

Indians were not permitted to sell their reserve lands, but Canada reserved the right to expropriate reserve lands with compensation.[59] The Indians retained a limited "right to pursue their avocations of hunting, trapping and fishing throughout the tract surrendered."[60]

Bands "now actually cultivating the soil, or who shall hereafter settle on their reserves and commence to break up the land," were to be given "once and for all" certain specified farm tools and seed on a per family basis.[61] The treaty also required a census "of all the Indians inhabiting the tract"

---

57 Alexander Morris, *The Treaties of Canada with the Indians* (Toronto, 1880; reprint Toronto: Coles, 1971), 96 (ICC Documents, p. 11).

58 Quoted in John Leonard Taylor, *Treaty Research Report: Treaty Four (1874)* (Ottawa: Indian and Northern Affairs Canada, 1985), 44. Emphasis added.

59 John Leonard Taylor, *Treaty Research Report: Treaty Four (1874)* (Ottawa: Indian and Northern Affairs Canada, 1985), 45.

60 John Leonard Taylor, *Treaty Research Report: Treaty Four (1874)* (Ottawa: Indian and Northern Affairs Canada, 1985), 45; and Alexander Morris, *The Treaties of Canada with the Indians* (Toronto, 1880; reprint Toronto: Coles, 1971), 330-35 (ICC Documents, pp. 29-38).

61 John Leonard Taylor, *Treaty Research Report: Treaty Four (1874)* (Ottawa: Indian and Northern Affairs Canada, 1985), 45. Information acquired through ICC's inquiry into the Kawacatoose First Nation's treaty land entitlement claim suggests that at least one agent was hesitant to provide livestock until the band, in his estimation, was ready. He advised a band that was unwilling to have its reserve surveyed in the absence of one of the band's headmen that "they would receive no cattle nor anything else except their rations, ammunition, twine and tobacco as the treaty provided that until they had their reserves marked out and had stables and hay for the cattle they were not to get any."Angus McKay, Indian Agent, Department of Indian Affairs, to Superintendent General, Department of Indian Affairs, October 14, 1876 (ICC, *Inquiry into the Treaty Land Entitlement Claim of the Kawacatoose First Nation*

and the commencement of annuity payments, as well as a one-time and also yearly distribution of goods. After the September 15, 1874, signing at Fort Qu'Appelle, six adhesions followed at other locations on September 21, 1874; September 8, September 9, and September 24,1875; August 24, 1876; and September 25, 1877.[62]

Assiniboine Council near Fort Walsh, Saskatchewan, 1878
Glenbow Archives NA-936-34

[Ottawa, March 1996], ICC Exhibit 1, p. 82).

[62] Alexander Morris, *The Treaties of Canada with the Indians* (Toronto, 1880; reprint Toronto: Coles, 1971), 330-35 (ICC Documents, pp. 29-38).

In 1875, W.J. Christie was appointed Indian Commissioner "to select the Reserves where they shall be deemed most convenient and advantageous for the Indians, each reserve to be selected as provided by the treaty after conference with the bands of Indians interested therein, and subject to the other conditions set forth in the treaty." A surveyor, who was to proceed in a manner recommended by the Surveyor General, was placed at his "disposal" for this purpose.[63]

As of 1876, the Indian Affairs Branch's North-West Superintendency was responsible for administering the affairs of some 17,000 treaty Indians, most of whom depended on the buffalo for their subsistence.[64]

Assiniboine Adhesion to Treaty 4, 1877

The Assiniboine at Fort Walsh were the last to sign Treaty 4. They were the largest group of Assiniboine to adhere to Treaty 4, but they did not sign until September 25, 1877, fully three years after the treaty began at Qu'Appelle.[65] The Assiniboine's adhesion was taken by the commander of the fort, NWMP Inspector Major James M. Walsh. It was witnessed by Constant Provost, who explained it, and Sub-Inspectors J.H. McIllree and Percy Reginald Neal, both of the NWMP.[66]

The census, taken between September 19 and 23, 1877, named the bands assembled at Fort Walsh and sorted out individuals according to whether they were British Indians or American Indians. There were, in total, 296 lodges: 189 Assiniboine, 60 Saulteaux, and 47 Cree at Fort Walsh

---

63 Order in Council, July 9, 1875, and Instructions to W.J. Christie, July 15, 1875, National Archives of Canada (hereafter NA), RG 10, vol. 3622, file 5007, as cited in Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt II, p. 21).

64 Walter Hildebrandt and Brian Hubner, *The Cypress Hills: The Land and Its People* (Saskatoon: Purich Publishing, 1994), 106-07.

65 *Treaty No. 4 between Her Majesty the Queen and the Cree and Saulteaux Tribes of Indians at Qu'Appelle and Fort Ellice* (Ottawa: Queen's Printer, 1966), adhesion by Assiniboine, 13-14 (ICC Documents, pp. 27-28).

66 *Treaty No. 4 between Her Majesty the Queen and the Cree and Saulteaux Tribes of Indians at Qu'Appelle and Fort Ellice* (Ottawa: Queen's Printer, 1966), adhesion by Assiniboine, 13-14 (ICC Documents, pp. 27-28). Five years later, as acting Indian agent at Fort Walsh, McIllree dedicated his efforts to pressuring virtually all Indians, including the Assiniboine Band, out of the Cypress Hills and to closing Fort Walsh.

that September.[67] Approximately "one hundred and forty-five (145) lodges of Assiniboine ... had never given adhesion to any previous treaty nor received payment."[68] When they adhered to the treaty on September 25, 1877, they made it known to Walsh that their territory included the Cypress Hills:

> The country claimed by the Assiniboine, admitted in treaty this year by me as the country of their forefathers, extends from the west end of Cypress Mountain to Wood Mountain on the east, north to the South Saskatchewan and south to Milk River.
>
> Since my arrival in this country they have not gone further east than forty (40) miles east of the east end of Cypress Mountain, this is owing to the large number of Sioux in that locality whom the Assiniboine do not care to be intermingling with. The other sections of the country mentioned have been occupied by them for the last two (2) years, one-half have wintered on the Canadian side of the line on Milk River, the other half at the west end of the mountain.[69]

That the Cypress Hills were Assiniboine territory, Walsh made known to Minister of the Interior Meredith in an October 1877 report.[70]

When they adhered to Treaty 4, the Assiniboine Band members were represented by Man Who Took the Coat,[71] Long Lodge Tepee Hoska, Wich-a-wos-taka, and Poor Man. Their names and marks appear on a short document, attached to a copy of the treaty, which reads, in part:

> We, members of the Assiniboine Tribe of Indians ... transfer, surrender and relinquish ... all our right, title and privileges whatsoever which we and the bands which we

---

67 Report, J.M. Walsh to Minister of the Interior, E.A. Meredith, October 28, 1877, Canada, Parliament, *Sessional Papers*, 1879, No. 10, xxxi-xxxiv (ICC Documents, pp. 39-42).

68 Report, J.M. Walsh to Minister of the Interior, E.A. Meredith, October 28, 1877, Canada, Parliament, *Sessional Papers*, 1879, No. 10, xxxi-xxxiv (ICC Documents, pp. 39-42). Man Who Took the Coat, who had 69 lodges, had been a treaty Indian since 1875, but it is not known with which band.

69 Report, J.M. Walsh to Minister of the Interior, E.A. Meredith, October 28, 1877, Canada, Parliament, *Sessional Papers*, 1879, No. 10, xxxi-xxxiv (ICC Documents, pp. 39-42).

70 Report, J.M. Walsh to Minister of the Interior, E.A. Meredith, October 28, 1877, Canada, Parliament, *Sessional Papers*, 1879, No. 10, xxxi-xxxiv (ICC Documents, pp. 39-42).

71 Also known as The One That Fetched the Coat (aka The-Man-Who/That-Took/Fetched/Stole-the-Coat or "Jack").

represent have held or enjoy, of, in and to the territory described and fully set out in the said articles of treaty.[72]

In a letter to the Deputy Minister of the Interior, Walsh reported on how the young Man Who Took the Coat, the elderly Long Lodge, and Poor Man came to be Chiefs of the Assiniboine Band in 1877:

> After Mr. Allen had completed taking the census I found that more treaty Indians were divided into three Bands, sixty-nine (69) lodges under the "Man who took the Coat," forty-two (42) lodges under "Long Lodge," and thirty-four (34) lodges under the "Poor Man." The "Man who took the Coat" has been a treaty Indian since 1875, and a head soldier to the "Little Black Bear" (Cree). He is a young man of twenty-two (22) years of age, and at the present time the most influential Indian in this section. He is an exceedingly good man and very obedient to the law.
>
> The forty-four (44) lodges of Assiniboine who had drawn annuities previously with the "Little Black Bear" told me they wanted a Chief of their own tribe added to this number: there were sixty nine (69) Lodges of Non-Treaty Indians who made a similar request. At the solicitation of such a large number of persons I consented to allow the Assiniboine who had formerly gone with "Little Black Bear" to withdraw from the latter's band, and knowing the "Man Who Took the Coat" to be a good man, and one on whom the Government could depend, I consented to their request, and allowed them to elect him their Chief. I then allowed him to appoint two (2) Head men. "Long Lodge," an old and recognized Chief of the Assiniboine for a great many years had only forty-two (42) Lodges. This number said they did not want to see him thrown to one side and not admitted by the "White Mother" as a Chief, that he was now getting old and had always been a good friend to his people and the Whites.
>
> Since my arrival here "Long Lodge" and camp (altogether considered notorious before the arrival of the Police) have been most obedient to the law. The "Poor Man" much the same as "Long Lodge's" camp, is very much reduced owing to the objection that many of his followers were American Indians; he has at present thirty-four (34) lodges; he is a good man and very friendly to the Whites; his people said they would not join any other Chief, and if I could not admit him as such, to pay them by themselves. As the Act states that every Band composed of thirty (30) Indians was entitled to a Chief, I allowed them to elect him as such.[73]

---

[72] *Treaty No. 4 between Her Majesty the Queen and the Cree and Saulteaux Tribes of Indians at Qu'Appelle and Fort Ellice* (Ottawa: Queen's Printer, 1966), adhesion by Assiniboine, 13-14 (ICC Documents, pp. 27-28).

[73] Report, J.M. Walsh to Minister of the Interior, E.A. Meredith, October 28, 1877, Canada, Parliament, *Sessional Papers*, 1879, No. 10, xxxi-xxxiv (ICC Documents, pp. 39-42).

The Indian Claims Commission has not been provided with any further information about Long Lodge's background; however, it is known that, when adhering to Treaty 4, Long Lodge reminded Walsh that, the previous year, Walsh had refused to take the adhesion of his band and others without authorization from the Superintendent General of Indian Affairs. Walsh agreed to take this delay into account and to pay them for the previous year as well.[74]

Since Walsh was concerned about the confusion arising from the bands of Little Black Bear (Cree) and Little Child (Saulteaux) going to Qu'Appelle for their annuities, he wrote: "The Assiniboine must be paid here [in the Cypress Hills], *this being their country* and the majority of them could not be induced to go elsewhere."[75] Even though efforts were subsequently made to send them elsewhere, the "Assiniboine Band" was paid treaty annuities at Fort Walsh every year from 1877 to 1882.[76]

Appointment of Edgar Dewdney as Indian Commissioner, 1879

By the time the members of Assiniboine Band were ready to select their reserve in 1879, Edgar Dewdney had replaced W.J. Christie as Indian Commissioner. Dewdney, an English-born civil

---

[74] Report, J.M. Walsh to Minister of the Interior, E.A. Meredith, October 28, 1877, Canada, Parliament, *Sessional Papers*, 1879, No. 10, xxxi-xxxiv (ICC Documents, pp. 39-42).

[75] Report, J.M. Walsh to Minister of the Interior, E.A. Meredith, October 28, 1877, Canada, Parliament, *Sessional Papers*, 1879, No. 10, xxxi-xxxiv (ICC Documents, pp. 39-42). Emphasis added. In this report, Walsh describes Little Child as "Chief of the Saulteaux"; subsequent reports by Dewdney refer to Little Child as Cree.

[76] Only a few annuity paylists were supplied in this inquiry; the ICC did not receive a coherent set. See for 1877 and 1878: Sir Cecil E. Denny, *The Law Marches West*, ed. W.B. Cameron, with a foreword by A.C. Rutherford (Toronto: J.M. Dent and Sons, 1939), 133. See for 1879: January 2, 1880, Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, Canada, Parliament, *Sessional Papers*, 1880, No. 4, 76-77 (ICC Documents, pp. 50-51), and annuity paylists, NA, RG 10, vol. 9413, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 31). See for 1880: Report of Irvine, December 29, 1880, in Canada, "Annual Report of the Commissioner of the NWMP, 1880," in *Sessional Papers*, cited in Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt 1, p. 9). See for 1881: Superintendent General of Indian Affairs to Governor General, December 31, 1881, Canada, Parliament, *Sessional Papers*, 1882, No. 6, vii-viii (ICC Documents, pp. 86-87), which is also at John A. Macdonald, Superintendent of Indian Affairs, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), vii, in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 9). See for 1882: McDonald to Dewdney, November 11, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 313-15).

engineer, surveyor, and politician, became Indian Commissioner in May 1879.[77] In the mid-1860s, he had supervised the construction of the "Dewdney Trail," a route to the British Columbia interior "for the British to maintain control over the growing gold-mining interests in the region."[78] He had been elected to the Legislative Council of British Columbia in 1870 and, from 1872, had served as a Conservative Member of Parliament for Yale, British Columbia.[79]

The year before Dewdney's appointment as Indian Commissioner, the Conservative Party under leader Sir John A. Macdonald had been elected to bring about tariff protection for Canadian manufacturers. In March 1879, Macdonald's government launched the "National Policy" which, during the 1880s, became synonymous with constructing the Canadian Pacific Railway and promoting western settlement.[80] During the same period, Dewdney's name became intimately connected to the implementation of Indian Affairs' policies in the west; he took his instructions directly from Macdonald, who was also the Minister of the Interior.[81]

This reorganization of the "system of administering Indian matters in the North-West"[82] depended on the appointment of "a gentleman of ability and experience, in whose judgment the Government had perfect confidence."[83] Dewdney, therefore, had "large discretionary powers"[84] to

---

77 Report of John A. Macdonald, Minister of the Interior, in Canada, *Annual Report of the Department of Interior for the Year Ended 30th June 1879* (Ottawa, 1880), xii (ICC Documents, p. 45). Dewdney's position was confirmed by an Order in Council of May 30, 1879. Dewdney's predecessors were Christie, McKay, and Liard. Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, p. 26).

78 "Sir Edgar Dewdney" and "Dewdney Trail," *The Canadian Encyclopedia*, 2nd ed. (Edmonton: Hurtig, 1988), 591.

79 "Sir Edgar Dewdney" and "Dewdney Trail," *The Canadian Encyclopedia*, 2nd ed. (Edmonton: Hurtig, 1988), 591.

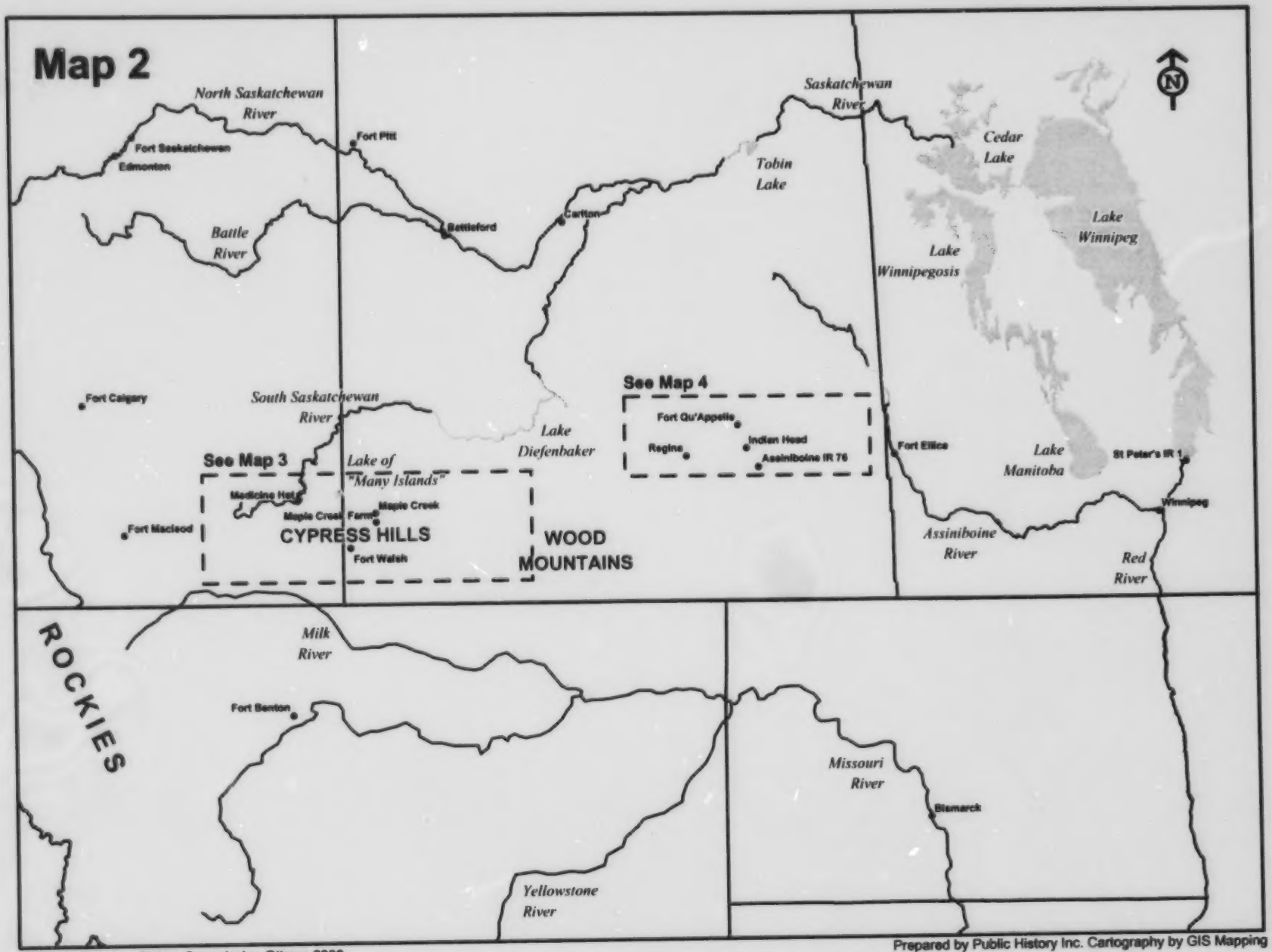
80 "National Policy," *The Canadian Encyclopedia*, 2nd ed. (Edmonton: Hurtig, 1988), 1432.

81 Macdonald memo, May 16, 1879, NA, RG 10, vol. 3686, file 13364, in Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt II, p. 24).

82 Report of John A. Macdonald, Minister of the Interior, in Canada, *Annual Report of the Department of Interior for the Year Ended 30th June 1879* (Ottawa, 1880), xii (ICC Documents, p. 45).

83 Report of John A. Macdonald, Minister of the Interior, in Canada, *Annual Report of the Department of Interior for the Year Ended 30th June 1879* (Ottawa, 1880), xii (ICC Documents, p.45).

84 Report of John A. Macdonald, Minister of the Interior, in Canada, *Annual Report of the Department of Interior for the Year Ended 30th June 1879* (Ottawa, 1880), xii (ICC Documents, p. 45).



Copyright © Indian Claims Commission Ottawa 2000

Prepared by Public History Inc. Cartography by GIS Mapping

"direct his subordinates at the different Agencies."[85] He was also required to choose the location of 19 "farming agencies," which Macdonald stated should "lead in due course to the abandonment by the Indians of the hunt, and their settlement upon their reserves."[86]

By the time of Dewdney's appointment, Indians had already starved to death at Qu'Appelle, Fort Walsh, Fort Macleod, Battleford, Carlton, Fort Pitt, Fort Saskatchewan, Edmonton, Touchwood Hills, Fort Ellice, Moose Mountain, Fort Calgary, and elsewhere.[87] Despite the Indians' perilous circumstances, relief was meted out by the Deputy Superintendent General of Indian Affairs, Lawrence Vankoughnet, on the condition that his Indian agents "require labor from able-bodied Indians for any supplies given them" so they would learn "they must give something in return of what they receive."[88]

At the same time, officials at Indian Affairs headquarters were keenly aware of the immediate perils of completely ignoring the desperate condition of Indians:

> There is little doubt that had supplies not been sent many more of these poor creatures would have perished, or they would have been driven by desperation to help themselves at the expense of the white settlers of the country. The only wonder is that they did not do so before the relief reached them.[89]

The Indians reportedly were grateful for government help, which was given almost with a sense of relief if not gratitude:

> [T]he patience and endurance displayed by the Indians of the North-West Territories, under trying circumstances in which they were placed, are beyond all praise, and their

---

85 Report of John A. Macdonald, Minister of the Interior, in Canada, *Annual Report of the Department of Interior for the Year Ended 30th June 1879* (Ottawa, 1880), xii (ICC Documents, p. 45).

86 Report of John A. Macdonald, Minister of the Interior, in Canada, *Annual Report of the Department of Interior for the Year Ended 30th June 1879* (Ottawa, 1880), xiii (ICC Documents, p. 46).

87 L. Vankoughnet, Deputy Superintendent General of Indian Affairs, to Superintendent General of Indian Affairs, December 31, 1879 (ICC Documents, p. 47).

88 L. Vankoughnet, Deputy Superintendent General of Indian Affairs, to Superintendent General of Indian Affairs, December 31, 1879 (ICC Documents, p. 47).

89 L. Vankoughnet, Deputy Superintendent General of Indian Affairs, to Superintendent General of Indian Affairs, December 31, 1879 (ICC Documents, p. 47).

> refraining from helping themselves at the expense of the white inhabitants of the country, even when pressed with hunger, and pained by the sight of some of their friends dying around them and others greatly reduced in strength, entitles them to every consideration at the hands of the public.[90]

Dewdney launched the model or home farm system on reserves, but soon lobbied for the idea of central supply farms instead. There were eight farming instructors in Treaty 4 by January 1882, but, by that time, Dewdney was already planning to dispense with those in the eastern part of the Treaty 4 area.[91] Ultimately the Macdonald government phased out the model farm plan altogether.[92]

SELECTING THE ASSINIBOINE RESERVE SITE, CYPRESS HILLS, 1879

On June 26, 1879, less than a month after his May 30 appointment, Indian Commissioner Dewdney arrived at Fort Walsh via Collingwood, Duluth, Bismarck, and Fort Benton.[93] He found "the reports as to the scarcity of buffalo had not been exaggerated, and numbers of Indians of the Cree, Assiniboine and Blackfeet were awaiting the arrival of Col. MacLeod and myself. ... They were anxious to know what the government intended to do to assist them and begged for food to take them to the buffalo, which they expected to find near the Boundary line."[94] Commissioner James Farquharson Macleod of the NWMP, who accompanied Dewdney, explained that Dewdney had been

---

[90] L. Vankoughnet, Deputy Superintendent General of Indian Affairs, to Superintendent General of Indian Affairs, December 31, 1879 (ICC Documents, p. 48).

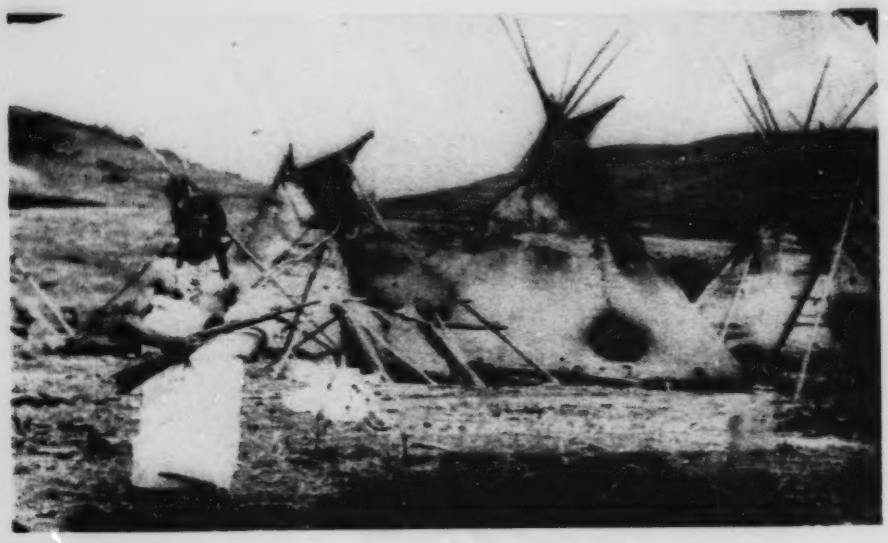
[91] Edgar Dewdney to Superintendent General of Indian Affairs, January 1, 1882, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), 38, in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 9).

[92] Walter Hildebrandt and Brian Hubner, *The Cypress Hills: The Land and Its People* (Saskatoon: Purich Publishing, 1994), 108.

[93] Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, Parliament, *Sessional Papers*, 1880, No. 4, 76-77 (ICC Documents, pp. 50-51).

[94] Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, Parliament, *Sessional Papers*, 1880, No. 4, 76-77 (ICC Documents, pp. 50-51).

sent by the government to devote his whole time to their interests and "to show them how to live"[95] that is, the government expected them to "work and earn their own living."[96]



Assiniboine Camp in the Cypress Hills [ca. 1878]
Glenbow Archives NA-790-4

Dewdney remained at Fort Walsh until July 6, 1879. He met with different bands to explain the government's policy and "advised them to select their land and settle on their reserves."[97] He told them he "had brought two farmers [Taylor and Wright] with [him] who would at once commence to break up the soil and raise crops to furnish them with seed and food while at work on their own reservations."[98] He reported to Macdonald that "[a]ll the Indians expressed great satisfaction at what

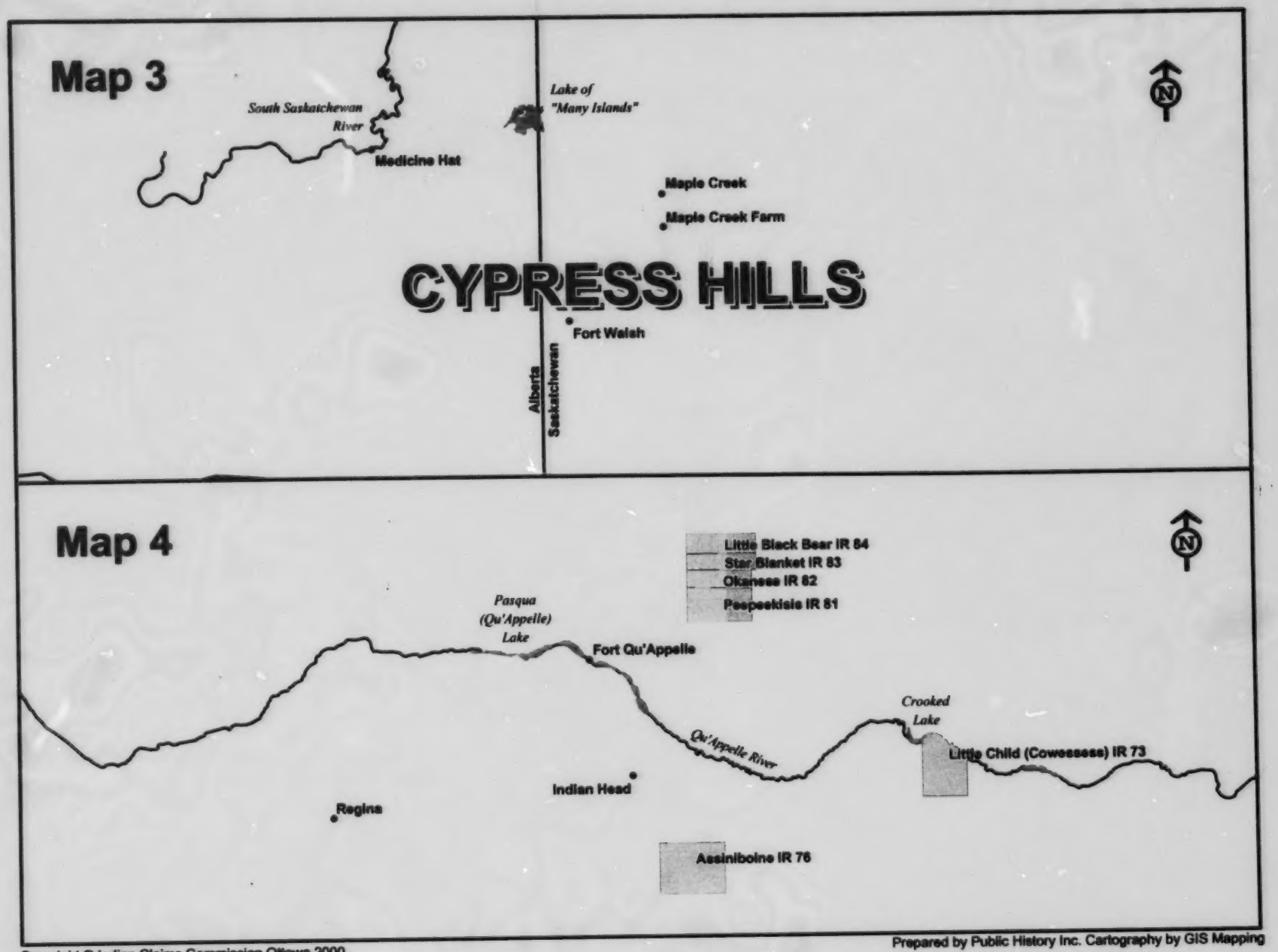
---

[95] Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, Parliament, *Sessional Papers*, 1880, No. 4, 76-77 (ICC Documents, pp. 50-51).

[96] Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, Parliament, *Sessional Papers*, 1880, No. 4, 76-77 (ICC Documents, pp. 50-51).

[97] Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, Parliament, *Sessional Papers*, 1880, No. 4, 76-77 (ICC Documents, pp. 50-51).

[98] Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, Parliament, *Sessional Papers*, 1880, No. 4, 76-77 (ICC Documents, pp. 50-51).



Copyright © Indian Claims Commission Ottawa 2000

Prepared by Public History Inc. Cartography by GIS Mapping

I told them, and two of the principal chiefs 'The Man-that-Stole-the Coat', an Assiniboine, and 'Little Child', a Cree, at once expressed a desire to select their land and settle down."[99]

The 747 Assiniboine "for whom the reserve in the Cypress Hills was intended" were paid treaty annuities at Fort Walsh in September 1879.[100] The Assiniboine verbally selected the site for their reserve when they first met Dewdney in June 1879. It was not until October 26, 1879, that Dewdney actually visited "the locality that the Assiniboine Chief had notified me in the spring [late June or early July 1879] that he would like for his reservations." About the same time, he assigned John J. English, of Omemee, Ontario, there to start a farm on the Assiniboine Reserve. Nevertheless, Dewdney acknowledged the matter of early frosts there as soon as he saw the site, roughly 20 miles west of Fort Walsh:

> It is situated on the north-west end of Cypress Mountains, and is well located for farming, provided early summer frosts are not prevalent. As no crop of any kind has ever been put in this locality, it is difficult to say how it may turn out. It has been a favorite wintering place for Half-breeds for several years, and there are a number of abandoned houses, which will be made use of by the Indian instructor sent there, as well as by the Indians themselves.[101]

English had a farm taking shape at the "Assiniboine Reserve" by the summer of 1880 when the surveyor, Alian Poyntz Patrick, was ready to survey it according to Dewdney's instructions.[102] Dewdney, reporting on the North Assiniboine who wanted to settle in the Wood Mountains and on

---

99 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, Parliament, *Sessional Papers*, 1880, No. 4, 76-77 (ICC Documents, pp. 50-51).

100 Annuity paylists, NA, RG 10, vol. 9413, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 31).

101 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 95 (ICC Documents, p. 54).

102 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 99 (ICC Documents, p. 58).

the [South] Assiniboine Band who wanted to settle in the Cypress Hills, made it clear in January 1880 that the "Assiniboine have not, as yet, settled on their reservations."[103]

Assiniboine Reserve, Little Child's Reserve, and Farming Agencies, 1879–1880

In the fall of 1879, Dewdney assigned the following farming instructors for the Southern District:

> Mr. Setter, east of the Cypress Hills [60 miles from Fort Walsh], on the Cree [Little Child's Maple Creek] Reservation. I consider this an excellent appointment as he speaks the language fluently himself, and has been accustomed to Indians the greater part of his life. Mr. English I despatched to the Assiniboine Reservation [west end of Cypress, 20 miles from Fort Walsh]; Mr. Bruce, Piegan Reservation, and Mr. Patterson to the Blackfoot Crossing.[104]

This information appeared in chart form in the 1879 *Annual Report of the Department of the Interior,* but Dewdney qualified it with a note stating: "It may be found by and bye that it will be desirable to alter the location of some of these."[105]

The location of Little Child's reserve was most in question at that time. Little Child had indicated to Dewdney in the spring of 1879 that he had wanted his reserve about 20 miles east of Fort Walsh (near the future town of Maple Creek), "but on visiting it and finding timber was very scarce, he [Little Child] thought he would prefer it up Battle River, the creek upon which Fort Walsh

---

103 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 97 (ICC Documents, p. 56).

104 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 96 (ICC Documents, pp. 55).

105 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 99 (ICC Documents, p. 58).

is built."[106] Dewdney agreed, providing "the country was capable of raising crops."[107] Being unable to visit this locality in October 1879, Dewdney sent Setter to see it, but Setter "did not appear to think favorably of the location, so [Dewdney] instructed him to make but very slight improvements, as [Dewdney] expected different arrangements would be necessary in the spring [of 1880]."[108] The location Setter saw likely was the spot Little Child had chosen on Battle River, for, in November 1879, Dewdney inspected Little Child's reserve, "to which I had appointed Mr. Setter, and found it was totally unfit for a farming agency or an Indian reservation."[109] Dewdney therefore redirected Setter "to the valley near the police station ... east of the Cypress Hills" and ordered Little Child to inspect that location (near the future town of Maple Creek) and "inform Mr. Setter if he was satisfied with it."[110] What Little Child's feelings about this location were in 1879 is not known, but by 1881 he was not content there.

Dewdney had originally intended to assign English to Fort Macleod, but circumstances led to his reassignment to work with the Assiniboine Band. The farming instructor's two-month trip west from Winnipeg via the Missouri River[111] had brought him to Fort Walsh late in October 1879, when there was already snow on the ground.

---

106 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 95 (ICC Documents, p. 54).

107 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 95 (ICC Documents, p. 54).

108 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 95 (ICC Documents, p. 54).

109 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 96 (ICC Documents, p. 55).

110 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 96 (ICC Documents, p. 55).

111 Gwen Pollock and Elsie Hammond Thomas, *Our Pioneers* (Prime: South Western Saskatchewan Oldtimers' Association, 1994), 38-39.

On January 2, 1880, Dewdney recommended that a Fort Walsh Agency be established with an additional Treaty 4 agent.[112] There was only one agent, Agent Alan McDonald, at Swan River, with sole responsibility for the entire Treaty 4 area, but his location was in the easternmost part. It was not until September 13, 1880, that Edwin Allen became the first Indian agent based at Fort Walsh.[113]

In a lengthy letter to the editor of the Omemee *Herald*, his home newspaper, English explained what happened on his arrival:

> We remained in our tents for three days waiting the arrival of the Commissioner to send us to our different reservations. My appointment was for Fort McLeod [sic], 180 miles further west, but the Commissioner thought as I had my family along, and as the season was late, I had better remain here and take the Assiniboine Reservation, which is situated at the head of Cypress Mountain, a distance of 18 miles from the Fort ... I went up to the reservation in a few days and on it found quite a number of houses unoccupied, so I took possession of one for the present and here made the acquaintance of eight young English gentlemen, just out from the Old Country, who had come West to start farming and stock-raising. They also took possession of one of the houses and remained all winter, so between the Fort and farm I spent the winter, my man remaining on the reservation all the time, in case any Indians should come hungry to feed them; but we had not any until about the end of April, when they commence to arrive.[114]

Consequently, English's appointment as the farm instructor at the site selected by the Assiniboine Band in the fall of 1879 preceded by about a year Allen's arrival as the Indian agent at the fort.[115] In spite of snow remaining on the ground until May 1, 1880, being incapacitated for

---

112 Edgar Dewdney, Indian Commissioner, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 101 (ICC Documents, p. 60).

113 Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1879* (Ottawa, 1880), in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10A and 10B, vol. 1, doc. 2).

114 Gwen Pollock and Elsie Hammond Thomas, *Our Pioneers* (Prime: South Western Saskatchewan Oldtimers' Association, 1994), 38-39.

115 Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1879* (Ottawa, 1880), in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 2).

weeks when his knee was kicked by an ox, and having to replace his assistant, English was not discouraged:

> The assistant Commissioner [likely E.T. Galt] paid me a visit a short time ago and was well pleased with the result of my labour. To use his own words in a letter he sent me from the Fort shortly after his visit, he says: "I may say that my visit to the Reservation last week was a very satisfactory one to me, and proved to me that you are taking a lively interest in the welfare of the Indians, and which I am quite sure, in a short time will show good results."[116]

The specifics were:

> Have thirty acres under crop, broken this Spring with one team, out of sod. The crop consists of six acres of wheat, eight of potatoes, seven of oats, and seven of barley, with two acres of turnips and carrots and about two of garden vegetables, which look well for this high climate, we have lots of very cold weather, being over 4200 feet above the level of the sea.
>
> I have at present about eight hundred Indians on the Reservation, to whom I issue rations every morning, namely half a pound of flour and half a pound of beef for each member of the family. The beef cattle are driven up from the Government herd at the Fort, and killed on the reservation.
>
> I have forty Indians at work, for which they receive extra rations. They work well and I have very little trouble with them. They are very kind to me and often make me presents, but at the same time, as is natural with Indians, expect double the value in return.
>
> I intend to have a jollification for them as soon as I get my new house, which I think will be about the 12 inst. I have invited some of my friends up from the Fort and have purchased some articles for prizes, as I intend to have races, shooting, sack races, squaw races and a lot of other amusements, and also give them a big feed, as I promised it to them when I got in my new house.
>
> I expect about 1500 Indians on the 25th inst, as that is about the time the payments are being made, and all Indians this year have to be paid on the Reservations.[117]

---

116 Gwen Pollock and Elsie Hammond Thomas, *Our Pioneers* (Prime: South Western Saskatchewan Oldtimers' Association, 1994), 38-40.

117 Gwen Pollock and Elsie Hammond Thomas, *Our Pioneers* (Prime: South Western Saskatchewan Oldtimers' Association, 1994), 38-40.

According to *Our Pioneers* , English did not move out of the Cypress Hills and to his first home near Maple Creek until 1883.[118]

Dewdney's January 2, 1880, report to Prime Minister Macdonald (who was still Superintendent General of Indian Affairs) seemed to seek confirmation of the government's objectives in sending farm instructors to newly established reserves in the North-West:

> The idea of taking a few Indians from each reservation and teaching them as you would pupils on a model farm would not be a success.
>
> I presume the wish of the Government is to obtain as great a return of food for the distressed Indians at as cheap a rate as possible, and while raising that on the reservation themselves, give the Indians an opportunity of learning how to make their own living out of the ground.[119]

Dewdney defended teaching Indians to farm as a way to avoid starvation, Indian wars, and crippling expenses for the government.[120] Moreover, he rejected the idea that Indian farms would unfairly interfere with agricultural production by settlers, reasoning that large numbers of settlers had not arrived yet:

> [T]he present policy of raising food ourselves in the interior, and at the same time that we are doing this, teaching our Indians how to make their own living, is the right one; the argument that growing with our own labour produce that could be raised by the settler is unfair to him, falls to the ground at the present time when should settlers not come in so rapidly as to supply the inevitable demand, a general uprising of Indians might follow; and it is surely desirable that when immigration sets in our Indians should be in as independent a position as possible. I am in hopes that in many

---

118 Gwen Pollock and Elsie Hammond Thomas, *Our Pioneers* (Prime: South Western Saskatchewan Oldtimers' Association, 1994), 38-39; and Sarah Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy* (Montreal & Kingston: McGill-Queen's University Press, 1990), 111. If English did not move to Maple Creek until 1883, it raises the question of where he lived if he did take over the Maple Creek Farm from Mr Setter in 1880, as suggested in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 31).

119 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 100 (ICC Documents, p. 59).

120 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 100 (ICC Documents, p. 59).

> sections of the North-West our Indians will be able to sell the settlers the seed they must have when first starting.[121]

Evidently Dewdney did not agree with the government's reserve-based approach. In his January 1880 report, he presented arguments in favour of establishing "farming agencies" separate from reserves:

> In considering in what way the farmers would be of most use in carrying out the wishes of the Government, I thought it desirable that they should be located off the Indian reservations ... and where a group of reservations had been settled on within a small radius a central position should be selected so that they could have the supervision of more than one reserve.[122]

As Dewdney conceived of them, "farming agencies" offered a threefold advantage. First, they would prevent Indians from regarding any crops or improvements produced or carried out on their reserve land in "the first season or so" largely by "our own labour" as their own. Second, they would allow farm instructors more independence. Finally, any surplus produce could be sent to "our central depot for future issue to distressed Indians."[123]

At Qu'Appelle, Indian Affairs' Inspector Thomas Page Wadsworth had already, where possible, located farmers off the reserves in accordance with Dewdney's reasoning in favour of farming agencies.[124] Dewdney was seeking Sir John A. Macdonald's approval of this approach which, if given, would have run contrary to English's activities on the Assiniboine Reserve.

---

121 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 100 (ICC Documents, p. 59).

122 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 100 (ICC Documents, p. 59).

123 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 101 (ICC Documents, p. 60).

124 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 101 (ICC Documents, p. 60).

Survey of the Reserve, 1880

As we have seen, in the fall of 1879, surveyor A.P. Patrick received instructions from Commissioner Dewdney "to define the limits of the Assiniboine and Little Child's Reserves, among others."[125] This Patrick did in the spring of 1880 because severe weather prevented him from carrying out Dewdney's instructions before then. In the meantime, on January 20, 1880, Dewdney advised the Surveyor General, Lindsay Russell:

> Mr. Patrick is now at Fort Walsh, and when able to work will complete a reserve for the Assiniboine and one for the Crees after which it will be necessary for him to proceed to Carleton.[126]

On October 1, 1879, approximately six weeks before Dewdney directed Patrick to define the Assiniboine Reserve, the Deputy Superintendent General of Indian Affairs had occasion to advise Sir John A. Macdonald on the general process whereby reserves had been defined. Vankoughnet stated:

> The rule followed by the Department has been when the Agent reports a Band to be desirous of having their Reserve set apart for them, which implies that they are prepared to settle down upon the Reserve, and cultivate same, the application of the Agent is referred to the Surveyor General for action.[127]

Alan McDonald was the Swan River–based Indian agent for Treaty 4, but there is no reference to him in documentation outlining the selecting and surveying of the Assiniboine Reserve in the

---

125 [A.P. Patrick] to Edgar Dewdney, Indian Commissioner, North-West Territories, December 16, 1880, NA, RG 10, vol. 3730, file 26219 (ICC Documents, p. 71).

126 Dewdney to Surveyor General, January 20, 1880, NA, RG 10, vol. 3713, file 20694, cited in Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt II, p. 26).

127 Vankoughnet to Sir John A. Macdonald, October 1, 1879, NA, RG 10, vol. 3700, file 17207, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10A and 10B, vol. 1, doc. 11).

Cypress Hills. His November 2, 1879, report to the Superintendent General of Indian Affairs did not discuss any departmental initiatives in the Cypress Hills.[128]

In 1879 the Indian Branch was still part of the Department of the Interior, as it had been from 1873. On May 7, 1880, it became an independent department, and a Survey Branch was eventually established within the new Department of Indian Affairs.[129] According to the report prepared by Jim Gallo for Canada in this inquiry, the establishment of the Survey Branch "was still in progress in the spring of 1881."[130] Throughout 1880 and 1881, there was some confusion about whether the Deputy Superintendent General should be asking the Deputy Minister of the Interior to instruct surveyors, or whether Commissioner Dewdney was to direct the surveyor at his disposal.[131] Using excerpts from correspondence pertaining to the St Peter's Reserve in Manitoba, Gallo asserts that, by 1883, or "once the Survey Branch had been established," Commissioner Dewdney had to seek the Deputy Superintendent General's approval of surveys.[132] The Surveyor General was unable to correct surveys of Indian reserves, and that created tension between the Department of the Interior and the Department of Indian Affairs.[133] This arrangement prevailed until 1893, when control over Indian reserve surveys was returned to the Surveyor General.[134]

---

128 A. Macdonald [sic], Indian Agent, Treaty No. 4, to Superintendent General of Indian Affairs, November 2, 1879, Canada, *Annual Report of the Department of the Interior for the Year Ended 30th June 1879* (Ottawa, 1880), 108-9, in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 1).

129 The Department of Indian Affairs was established under the provisions of SC 1880, 43 Vict., c. 28.

130 Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 21).

131 Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, pp. 21-22).

132 Dewdney to Vankoughnet, May 21, 1883, NA, RG 10, vol. 3713, file 20815, and Assistant Deputy Superintendent General Sinclair to Dewdney, June 1, 1883, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 22).

133 Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt II, pp. 32-33).

134 Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 22).

Just days before the Department of Indian Affairs was officially established in May 1880, and about the time surveyor Patrick was carrying out Dewdney's instructions, Dewdney felt it necessary to seek ministerial clarification of his general authority from Macdonald, who, in addition to being Prime Minister, held the portfolio for the departments of the Interior and Indian Affairs:

> You know my instructions are of a very general nature, and it is very difficult to determine what authority I possess – you may possibly deem it advisable to make them more definite – I am aware it is difficult to give detailed instructions to govern the duties that I have undertaken scattered as they are over so large a Territory with questions arising which must often be settled on the spot ...[135]

Whether more definite instructions were given can only be inferred from some of the documentation under consideration. With respect to the survey of a reserve for the Assiniboine in the vicinity of Fort Walsh, there is no clear evidence that either Macdonald or the Surveyor General directly objected to it at the time.

In the spring of 1880, "acting in accordance with a telegraphic despatch from [Dewdney] and instructions conveyed to [Patrick] by [Assistant Indian Commissioner] Mr. Galt," Patrick proceeded with the survey of the Assiniboine Reserve.[136] The area he marked off during the summer of 1880, in consultation with the Assiniboine Chiefs, encompassed approximately 340 square miles, including the model farm at the western end of the Cypress Hills and, to the north at a lower elevation, prairie and a lake.[137]

---

135 Dewdney to Sir John A. MacDonald, May 2, 1880, NA, RG 10, vol. 3686, file 13364, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 20).

136 [A.P. Patrick] to Edgar Dewdney, Indian Commissioner, North-West Territories, December 16, 1880, NA, RG 10, vol. 3730, file 26219 (ICC Documents, p. 71). Galt was appointed Assistant Indian Commissioner by Order in Council 845, June 12, 1879.

137 [A.P. Patrick] to Edgar Dewdney, Indian Commissioner, North-West Territories, December 16, 1880, NA, RG 10, vol. 3730, file 26219 (ICC Documents, pp. 70-75).

As the end of the year approached, Patrick reported on the seven reserves he had completed, the first being "Assiniboine, north of Cypress Hills," and the others being four in the File Hills and two at Crooked Lake.[138] With regard to the Assiniboine reserve he wrote:

> I have to report that this Reservation comprises an area of about three hundred and forty square miles. It extends along the North slope of the Cypress Hills the direction of which is East and West, a distance of Eleven miles having a depth of two miles on the summit platform and stretching away for thirty one miles out on the Prairie land below the ridge. The Indian Farm is on the highest point of the range, 4000 feet above sea level and about two miles from the brow of the Hills. On my arrival I met the Chiefs of the Band, who urged upon me their desire that the lines should be so run as to include the whole of the Timbered land.
>
> After much persuasion they consented that the course of the lines should be run as I proposed, North and South and East and West; My object in view being that the lines should, in their direction, accord with the general system adopted in government surveys; and further by this partition, a fair division of the Timbered Lands would be made. I carried out my survey accordingly and on my leaving them the Chiefs expressed themselves well satisfied with the result.
>
> The initial point is situated about one mile to the south of the Government farm at the head of the Mountain, and twenty-one miles West of Fort Walsh. The land in this vicinity is well timbered, and the Indians appear to be thoroughly aware of the value of the timber – which consists of Douglas Pine, a species of first class pitch pine, averaging in size from 12 to 14 inches in diameter and having a height from 40 to 50 feet clear of branches. The soil, a heavy black loam, is of itself well adapted for farming purposes. As a consequence of the excessive altitude – severe summer frosts exercise a detrimental influence upon farming operations.
>
> For my initial point I ran North a distance of thirty-one miles.
>
> For the first three miles, my line runs through a well timbered section of the Hills. In the course of the next five miles, which comprise an area of gently undulating hills, it crosses a Lake of about two miles and a half in extent, known as Fish Lake, adjacent to which a large number of Indians had been located for the winter, living upon the fish which are there abundant, principally Pike. The pasturage in this distance is very luxuriant, and the soil rich. From this point I descended to the Plain proper and for the remaining twenty-three miles the soil was barren and utterly useless for agricultural purposes.
>
> I then returned to the initial point and ran East upon a chord of eleven miles.
>
> For this distance the soil is good and similar to that before described at the Head of the Mountain. To the North of this line there are a number of "coulees" slightly timbered. These "coulees" form the heads of Creeks, these run North and join

---

138 [A.P. Patrick] to Edgar Dewdney, Indian Commissioner, North-West Territories, December 16, 1880, NA, RG 10, vol. 3730, file 26219 (ICC Documents, pp. 70-71).

> a water system which ultimately empties into the South Saskatchewan at the South East corner of this Reserve, there are two "coulees". Extending first to the East, where my East line crosses them, about a mile before their junction; and then trending to the South; from these "coulees" the Battle River rises; running south it passes Fort Walsh, and then into the Milk River, a tributary of the Missouri. From the South East corner of the Reserve the line runs North to the Lake of "Many Islands" a distance of thirty-two miles.
>
> For the first five miles the Pasturage and soil are good the "coulees" are sparsely timbered. On the rest of the distance to the Lake the soil is poor and alkaline. In order to meet the earnest wish of the Indians within justifiable limits (the soil being worthless) I slightly extended the line to the shores of the Lake valuable to them on account of the water fowl which are there plentiful.
>
> I then proceeded to the North West angle of the Reserve previously located by me and commenced to run a line representing the northern boundary. From this point I ran the line due east for a distance of three miles; thence north to the "Lake of Many Islands" making this Lake a part of the northern limit of the Reserve. Here the soil is barren and alkaline, I devoted much attention to gaining a topographical knowledge of the interior of this Reserve, the result of which will appear on my Plan.[139]

No plan has been located but, from the foregoing description, one can easily tell that, within the boundaries of this area, the landscape ranged from lush hills to a treeless prairie to lake land.

The area included timber, fish, fowl, rich pasture, and rich soil as well as barren plains, alkaline soil, and sparsely timbered coulees. The Chiefs, though not named, gave Patrick specific directions based on their long-term interests. In his report for this inquiry, Jayme Benson calculated that a reserve of 340 square miles "would have been sufficient for about 1750 people, which would have made sense given that English had stated that 1500 people were expected."[140]

How much Dewdney or Galt communicated with Patrick at Fort Walsh during 1880 is not clear.[141] Both visiting and communicating were difficult in 1880, as people and mail alike had to make their way to Fort Walsh through Montana. No post offices existed from the western boundary

---

139 [A.P. Patrick] to Edgar Dewdney, Indian Commissioner, North-West Territories, December 16, 1880, NA, RG 10, vol. 3730, file 26219 (ICC Documents, pp. 70-75).

140 Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt II, p. 12).

141 *Canadian Almanac* (Toronto: Copp Clark, 1880), 53.

of Manitoba to the Rocky Mountains.[142] United States postage was used, and the mail was delivered by contract with the North-West Mounted Police on a fortnightly basis.[143]

By June 1881, when Patrick's plans, mailed from Montana, were received in Ottawa by Deputy Superintendent General Vankoughnet, Patrick was no longer employed by the department.[144] Nevertheless, Vankoughnet forwarded the plans to Dewdney for approval:

> I have now to inform you that on the 15th and 17th inst. respectively three plans of (1) Little Black Bear, Star Blanket, Okanee and Pe-pe-kis-sis Reserves at File Hills (2) Osoup's Reserve on the Qu'Appelle River and (3) the Assiniboine Reserve, Treaty 4, were received at this Department without any covering letter. They were apparently mailed at Fort Assiniboine, Montana Territory U.S. about the 8th instant.
>
> I now send these documents to you inasmuch as they require to be examined and certified by Mr. Dewdney before they can be accepted by the Department as correct.[145]

Dewdney received Patrick's plans on July 4, 1881.[146] It is not known what became of them. Only two of the seven reserves described in Patrick's December 16, 1880, report were finally approved and confirmed, these being the Okanese and Starblanket reserves.[147]

Recognition of the existence of the Assiniboine "reserve" appears to have been given by the NWMP, at any rate. In late 1880, Lieutenant-Colonel Irvine, who had succeeded Macleod as

---

142 Sir Cecil E. Denny, *The Law Marches West*, ed. W.B. Cameron, with a foreword by A.C. Rutherford (Toronto: J.M. Dent and Sons, 1939), 139.

143 Sir Cecil E. Denny, *The Law Marches West*, ed. W.B. Cameron, with a foreword by A.C. Rutherford (Toronto: J.M. Dent and Sons, 1939), 139.

144 Dewdney to Vankoughnet, February 5, 1881, NA, RG 10, vol. 3733, file 26733, in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 25).

145 Vankoughnet to Galt, June 23, 1881, NA, RG 10, vol. 3751, file 29992, cited in Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt II, p. 27).

146 Galt to SGIA, July 4, 1881, NA, RG 10, vol. 3573, file 154, pt 1, cited in Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt II, p. 27), and Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 26).

147 Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 27).

lieutenant-in-charge at Fort Walsh,[148] reported that annuity payments had been made by Agent McDonald that fall to "the Assiniboine Indians at the Indian reservation at the head of the Cypress Hills."[149] Also in late 1880, Inspector Crozier, NWMP, noted "a considerable number of fish ... caught by the Indians in the lake at the head of the mountain, where the Assiniboine Reservation now is."[150] There is also evidence that medical help was sent to the area in the fall of 1880.[151] Patrick's report describing his survey of the Assiniboine Reserve in the Cypress Hills was published in the department's Annual Report for 1880.[152] Elsewhere in that Annual Report, a year-end chart entitled "Farming Agencies and Indian Reservations" shows John J. English as the instructor for the "Saulteaux" and "Assiniboine" at a location named simply "Cypress Hills."[153] No Indians are shown "on Reserve."[154] Although he was primary Indian agent for Treaty 4, Alan McDonald made almost no remarks about the Cypress Hills or the Assiniboine in the department's annual reports for 1880 or 1881.

---

148 Sir Cecil E. Denny, *The Law Marches West*, ed. W.B. Cameron, with a foreword by A.C. Rutherford (Toronto: J.M. Dent and Sons, 1939), 149, 159, 194.

149 Report of Irvine, December 29, 1880, in Canada, "Annual Report of the Commissioner of the NWMP, 1880," in Parliament, *Sessional Papers*, cited in Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt 1, p. 9).

150 Report of Crozier, December 1880, in Canada, "Annual Report of the Commissioner of the NWMP, 1880," in Parliament, *Sessional Papers*, cited in Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt II, p. 15).

151 Report of Kennedy, December 30, 1880, in Canada, "Annual Report of the Commissioner of the NWMP, 1880," in Parliament, *Sessional Papers*, in Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt II, p. 15).

152 Allan Pointz Patrick to [Indian Commissioner], December 16, 1880, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), 113-17, in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 2).

153 Chart, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), 95, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 2).

154 Chart, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), 95, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 2).

DEWDNEY'S RELOCATION PROPOSAL, NOVEMBER 1880

Barely a year after English had been assigned to the farm on the Assiniboine reserve and only a month after Edwin Allen had been appointed Indian agentat Fort Walsh, Dewdney recommended relocating the Assiniboine out of the Cypress Hills.[155] This recommendation was made in November 1880, a month *before* Patrick gave his year-end report to Dewdney on the survey of the Assiniboine reserve.

In the summer of 1880, John Macoun, a professor of botany and geology, had explored the Cypress Hills and had somehow compared English's farm at the Head of the Mountain with that of Setter at Maple Creek. Although Macoun found the soil at the Head of the Mountain "far superior" to that at Maple Creek, he pronounced that farming in the Cypress Hills would "always be a failure" owing to the climate.[156] This sentiment was echoed in Agent Edwin Allen's first report to Macdonald on September 30, 1880:

> I next visited the Assiniboine Reservation at the Head of Cypress Mountain. The reserve is situated in an excellent locality, for wood and water, but the climate is such that it is useless to think of continuing agriculture in that locality owing to the early frosts and snow storms which are so prevalent ... It is very much regretted the crops were not a success as the Assinniboines took every interest in the advancement of their agricultural pursuits, and displayed great willingness to do any work they were called upon to perform. I trust they will meet with better success next year, as their conduct during the past season has been most commendable and really merits better success than has attended to them this year. Although their crops were a failure they appear in no way discouraged, on the contrary, they speak of looking for a better location for their reserve next year.[157]

---

155 Edgar Dewdney, Commissioner of Indian Affairs, North-West Territories, to Superintendent General of Indian Affairs, November 19, 1880, NA, RG 10, vol. 3726, file 24800 (ICC Documents, pp. 83-85).

156 Extract from a Report of Exploration by Professor John Macoun in Canada, Parliament, *Sessional Papers*, 1881, No. 3, 16-17, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, pp. 28-29).

157 Allen to Superintendent General of Indian Affairs, September 30, 1880, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1880* (Ottawa, 1881), 106, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 2).

Allen had become the additional Indian agent in the Treaty 4 area on September 13, 1880.[158] In the position barely a year, he managed the western part of the Treaty 4 territory from Fort Walsh, where he had the company of T.P. Wadsworth, Inspector of Indian Farms and Agencies and one of the NWMP personnel.[159]

Wadsworth had been appointed in July 1879. Being a "close associate of Vankoughnet," he often communicated directly with Indian Affairs headquarters in Ottawa.[160] According to Wadsworth, he had been sent to Fort Walsh in 1881 "with instructions – first to ascertain what facilities that section of the country offered for the settlement of Indians, and next to induce them to go North and settle upon Reserves there."[161]

At least in a limited way, Dewdney anticipated the material considerations of vacating the Assiniboine Reserve. His concern was that nothing of value be left behind:

> It is of utmost importance that we should know as early as possible whether the change is to be made, as I have instructed Mr. Agent McDonald to look for a reserve to get some ground broken in the spring --- a year. In the event of this arrangement being carried out, the reserve at the head of the Cypress Mountains will have to be abandoned, and everything that can be made use of must be transferred to the new reserve.[162]

Dewdney gave this instruction to Inspector Wadsworth on February 21, 1881; he still had not received Patrick's plan of survey. There is no evidence that compensating the Assiniboine Band for

---

158 Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31 December 1880* (Ottawa, 1881), 105, in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 32).

159 *Canadian Almanac* (Toronto: Copp Clark, 1881), 46.

160 D. Aidan McQuillan, "Creation of Indian Reserves on the Canadian Prairies, 1870-1885," *Geographical Review* 70, no. 4 (October 1980): 395, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 32).

161 Wadsworth to Dewdney, August 17, 1884, NA, RG 10, vol. 7779, file 27140, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 36).

162 Dewdney to Wadsworth, February 21, 1881, NA, RG 10, vol. 3726, file 24763, cited in Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt III, p. 3).

improvements at the Assiniboine Reserve or for the loss of this land surveyed for them was being contemplated, nor was any discussion of surrender documented.

Dewdney suggested to Macdonald on November 13, 1880, that costs associated with anticipated crop failures at the "Assiniboine Reserve" were a reason to move the Assiniboine to the lower elevation of Maple Creek:

> I have the honor to inform you that the result of the Farm on the Assiniboine Reserve in the neighbourhood of Fort Walsh has not been as satisfactory as we had hoped.
>
> The grain was all frozen and had to be cut for hay, the Potatoes were all infused by the frost but the yield was considerable, fearing however that they had not ripened sufficiently to keep over the winter, I directed they should be fed, thus saving our flour.
>
> I am not at all sure whether in most seasons both Potatoes and Barley could not be raised there, but as a failure of a crop on a Reserve where so many Indians would eventually reside and depend on for food would be a very serious matter, I thought it better to advise a change of location for the Assiniboine Indians.
>
> I have induced the Crees who were settling on Maple Creek (Mr. Setter's Agency) to go north to their own Country where Reserves have been allotted some time ago and where portions of those bands are now settled and I think it will be advisable to transfer the Assiniboine to that locality. They are very good Indians and willing to do as we advise – they have worked well this summer, and Mr. English told me that at no times did he call on them for assistance without getting all the hands he required.
>
> Mr. Setter was more successful than any of our Farmers, his crops not having suffered from frost, a sample of his wheat I have which is first class and he ripened cucumbers and other vegetables which convinces me that the location would be a good one for the Assiniboine.
>
> I may state that I instructed Mr. Setter to return with the Indians that promised to go North. I expect they are already in the Qu'Appelle District.[163]

Dewdney had confidence in the Assiniboine's potential to be good farmers. He was also very aware of their hunting activities and their attachment to the Cypress Hills. At the end of 1880, he wrote:

> The country south is entirely destitute of game ... consequently our Blackfeet and Assiniboine will be utterly without ... resources. I am in hopes to be able to induce

---

163 Edgar Dewdney, Commissioner of Indian Affairs, North-West Territories, to Superintendent General of Indian Affairs, November 19, 1880, NA, RG 10, vol. 3726, file 24800 (ICC Documents, pp. 83-85).

> those Crees who, up to this time, have been attempting to make their living by the buffalo to go north; but it cannot be expected that either the Blackfeet or the Assiniboine can be induced to leave their own country. These, hitherto supposed to be averse to agriculture, have all shown such a disposition to work, that I believe in a few years they will be independent of the Government, if properly assisted and instructed in agriculture.[164]

The department's farm at Maple Creek, first associated with Setter and then with English, in 1881–82 became part of the story of the Assiniboine Band's removal from the Cypress Hills. The present town of Maple Creek, Saskatchewan, did not take shape until after the railroad reached the area in 1882.

Dewdney knew some Blackfoot and Assiniboine were attempting to pursue buffalo and small game south of the border. Doing so was dangerous owing to border patrols, hostile tribes, horse stealing, and whiskey traders.[165] Canada wanted to avoid any untoward incidents with the Americans; moreover, any violence on the frontier was contrary to Canada's plan for the opening the North-West to agricultural settlers.

On the border crossing situation, Macdonald wrote in his 1882 annual report as Minister of the Interior that "[a]part from considerations of an economical nature, the presence of these Indians in the vicinity of Fort Walsh is objectionable from an international point of view." Consequently, a pass system was proposed to curtail the movement of Indians across the border.[166]

Three weeks before Dewdney wrote to Macdonald proposing a relocation of the Assiniboine Band, the Macdonald government signed, on October 21, 1880, the controversial and costly contract

---

164 Edgar Dewdney, Commissioner of Indian Affairs, North-West Territories, to Superintendent General of Indian Affairs, December 31, 1880, Canada, Parliament, *Sessional Papers*, 1880-81, No. 4, 94 (ICC Documents, p. 82).

165 Edgar Dewdney, Commissioner of Indian Affairs, North-West Territories, to Superintendent General of Indian Affairs, December 31, 1880, Canada, Parliament, *Sessional Papers*, 1880-81, No. 4, 93-94 (ICC Documents, pp. 81-82).

166 Canada, *Report of the Department of Indian Affairs for the Year Ended 31st December 1882* (Ottawa, 1883), x, xi, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 40).

for constructing the Canadian Pacific Railway.[167] Regardless of whether farming or ranching would have provided a feasible livelihood for the Assiniboine Band in the Cypress Hills, larger political and economic factors were at work.

INDIAN INFLUX TO FORT WALSH, SPRING AND SUMMER 1881

During the winter of 1880–81, Assiniboine at the Cypress Hills had to eat their horses to survive.[168] Indians in the vicinity of Fort Walsh were generally unable to subsist by hunting, farming, or selling their labour. On May 4, 1881, Agent Allen reported large numbers of destitute Indians arriving at the fort from the direction of the Missouri. He feared they would become unmanageable unless they could be "divided into small parties." Furthermore, Indians from Battleford were bound for Fort Walsh, as well as those Indians starving at Qu'Appelle.[169]

Assistant Commissioner Galt's response to this news was to advise Allen "to endeavour to persuade" any Indians looking for relief to go to their respective reservations and "to inform them that the government will only afford them assistance while they are working on their Reserves." If necessary to get them on their way, Allen was authorized to send provisions with them for part of the way.[170]

Given the concerns of NWMP officials regarding the crisis, Galt immediately wrote to Macdonald.[171] Galt anticipated that the destitute Indians inundating Fort Walsh would wish to remain to "take up their Reserves in that neighborhood," a situation he opposed because the land in the "neighborhood" was "poor and generally unsuited for farming purposes." In his view, "it would just

---

167 "Railway History," *The Canadian Encyclopedia*, 2nd ed. (Edmonton: Hurtig, 1988), 1822.

168 Dan Kennedy, *Recollections of an Assiniboine Chief* (Toronto: McClelland and Stewart, 1972), 66, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 39).

169 Agent Edwin Allen, Fort Walsh, to Commissioner Edgar Dewdney, Winnipeg, May 4, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 158-60).

170 Assistant Commissioner Galt, Winnipeg, to Agent Allen, Fort Walsh, May 20, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 161-62).

171 Col. Irvine, NWMP, to White, April 25, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 165-66).

be wasting money to go to the expense of having Reserves surveyed for them, as in the end they must locate elsewhere."[172]

Fort Walsh 1, from sketch by A.J. Delany [1875]
N13677 (PAM)

Galt wrote to the Superintendent General again on May 24, 1881, about the need "to prevent a large gathering of Indians at Fort Walsh." He wondered if he would be directed to "cut down the rations" if the Indians refused to go to their reserves.[173] He advocated supplying bacon over beef as a way "to arrive at the cheapest method of feeding Indians."[174] Undermining Indians' ability to earn wages was another strategy Galt thought would help to force Indians to their reserves:

---

172 Assistant Commissioner Galt to Superintendent of Indian Affairs, May 20, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 163-64).

173 Assistant Commissioner Galt to Superintendent of Indian Affairs, May 24, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 168-72).

174 Assistant Commissioner Galt to Superintendent of Indian Affairs, May 25, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 173-77).

> No Government rations should be issued to Indians who are receiving pay from settlers for doing outside work. I think it would be well to encourage the Indians to work on their Reservations rather than seek employment from settlers until at all events they have built houses for their families and got their fields into a thorough state of cultivation.[175]

However, not all the views of the Commissioner's office were well received by government men working in the field. When Agent Allen tried to put "non-working" Indians on half rations, he was overruled at Fort Walsh by Colonel Irvine and the NWMP's Inspector Wadsworth on the grounds it was unwise.[176] At Fort Macleod, Indian Agent Norman Thomas McLeod similarly refused to issue half rations so as to prevent "serious" consequences to the public. He challenged Dewdney to fire him over the matter: "if you considered my action as a disobedience of orders, I must beg to be relieved of my duties here."[177]

Although the government sought to avoid paying annuities at Fort Walsh in 1881, to prevent confusion and losses that might result from paying individuals in more than one location, the Indians who had congregated there "refused to comply with the wishes of the Department" that they "return to their respective districts" and be paid "within the agencies to which they belonged."[178] The officers of the department abandoned their stance on paying only at reserves when enough buffalo appeared in the Fort Walsh area to provide "a pretext" for informing the Indians that "they would be paid on this occasion at Fort Walsh, in order that they might follow the buffalo at once without incurring the loss of time which their proceeding to their reserves for their annuities would involve."[179] This "fortuitous circumstance" enabled the government to avoid "a complication which might have

---

175 Galt to McLeod, May 26, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 178-79).

176 Agent Allen to Galt, June 27, 1881, NA, RG 10, vol. 4325 (ICC Documents, pp. 99-101).

177 Agent McLeod to Dewdney, June 24, 1881, NA, RG 10, vol. 344, file 29506-1 (ICC Documents, pp. 102-03). McLeod continued at Fort Macleod probably until 1883 (*Canadian Almanac* [Toronto: Copp Clark, 1881-83]).

178 Superintendent General of Indian Affairs to Governor General, December 31, 1881, Canada, Parliament, *Sessional Papers*, 1882, No. 6, vii-viii (ICC Documents, pp. 86-87).

179 Superintendent General of Indian Affairs to Governor General, December 31, 1881, Canada, Parliament, *Sessional Papers*, 1882, No. 6, vii-viii (ICC Documents, pp. 86-87).

resulted seriously, owing to the small number of mounted policemen at Fort Walsh."[180] Later in 1881, Colonel Irvine succeeded in convincing the government of the need to increase the strength of the NWMP from 300 to 500 men distributed over 13 posts in the North-West.[181]

Maple Creek, Little Child, and the Assiniboine Band, 1881

When farm instructor Setter was transferred from Maple Creek (east of the Cypress Hills) to the Crooked Lake Agency in 1880, English replaced him at Maple Creek.[182] From this information, Jim Gallo concludes that the Head of the Mountain farm was closed at that time.[183] No other information, however, has been found to confirm this assumption.

Included in the 1881 *Annual Report* is a letter from Agent Allen or Inspector Wadsworth to Dewdney about a May 1881 visit to Maple Creek Farm.[184] There, Little Child had "asked [the author] to give him a deed of the reserve, saying he was alarmed that it would be taken from him and handed over to some other Indians."[185] The author responded that he could not give him the deed, but said the land would not be handed over to anyone else provided Little Child "worked the place

---

180 Superintendent General of Indian Affairs to Governor General, December 31, 1881, Canada, Parliament, *Sessional Papers*, 1882, No. 6, vii-viii (ICC Documents, pp. 86-87).

181 Sir Cecil E. Denny, *The Law Marches West*, ed. W.B. Cameron, with a foreword by A.C. Rutherford (Toronto: J.M. Dent and Sons, 1939), 168.

182 "Farming Agencies and Indian Reservations, Treaties 4, 6, and 7, North-West Territories" in Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1880* (Ottawa, 1882), 95, in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 31).

183 "Farming Agencies and Indian Reservations, Treaties 4, 6, and 7, North-West Territories," in Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1880* (Ottawa, 1882), 95, in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 31).

184 [author and recipient unknown], May 14, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), xxxi-xxxii, in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 9).

185 [author and recipient unknown], May 14, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), xxxi-xxxii, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 9).

properly."[186] Little Child's response was to try to return his flag and medal with the statement: "[H]e had made his living before we came in the country and could do so again."[187] The writer of this May 14, 1881, letter reports that he told Little Child to give the flag and medal to English if he wanted and that he [the writer] "would see about appointing a new chief, and one who would make his men work."[188] The table in the report headed "Number of Indians in the North-West Territories and their whereabouts on the 31st December, 1881" has columns for "Name of Band," "Location of Reserve," "Tribe," "No. on Reserve," "No. being absent," "Total No. of Indians," and "Whereabouts of Absentees." On this table, all 297 of Little Child's Band are shown to be absent and hunting in the Fort Walsh District. The columns for "Location of Reserve" and "Tribe" opposite Little Child's name are empty.[189] All the members of the bands of Man Who Took the Coat (278), Long Lodge (123), Poor Man (137), Chic-ne-na-bais (286), and Duck Head Necklace (13), plus 74 "Stragglers," are also shown as absent and "Hunting buffalo, Fort Walsh District."[190] Unlike Little Child's Band, under "Tribe," the column for Assiniboine is filled in, and the "Location of the Reserve" is shown

---

186 [author and recipient unknown], May 14, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), xxxi-xxxii, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 9).

187 [author and recipient unknown], May 14, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), xxxi-xxxii, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 9).

188 [author and recipient unknown], May 14, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), xxxi-xxxii, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 9).

189 Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), 56, 58, in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 9).

190 Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), 56, 58, in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 9).

as "Maple Creek" for all the other bands.[191] Elsewhere in this 1881 *Annual Report*, a chart for "Farming Agencies and Indian Reservations" shows "J.J. English (Assiniboine Indians)" under the heading "Instructor," and "Maple Creek" is given as the "Location."[192] Five men were employed at Maple Creek, including the instructor.[193] Setter was shown to be at Crooked Lake.[194]

A local history of southwestern Saskatchewan, *Our Pioneers*, confirms English's involvement with Maple Creek Farm.[195] Unfortunately, it does not date the farm's establishment; however, it clearly locates Maple Creek Indian Farm near the present town of Maple Creek, Saskatchewan:

> The Department of Interior started an Indian Farm on Maple Creek a few miles south of the town [Maple Creek], the first instructor being J.J. English, who came west from Omemee, Ontario. A substantial log house was erected on the farm together with suitable out-buildings. When the Indians were moved to Qu'Appelle in 1882-83, the farm was no longer necessary for Indian purposes and it passed into the hands of Major Shircliffe, an ex-Mounted Police officer.[196]

Ninety acres of land at Maple Creek Farm were broken and 22 of them planted, mainly with wheat, oats, and potatoes in May 1881. Without naming the band or bands involved, Dewdney

---

191 Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), 56, 58, in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 9).

192 Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), 48-49, in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 9).

193 Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), 48-49, in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 9).

194 Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), 48-49, in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 9).

195 Gwen Pollock and Elsie Hammond Thomas, *Our Pioneers* (Prime: South Western Saskatchewan Oldtimers' Association, 1994), 3.

196 Gwen Pollock and Elsie Hammond Thomas, *Our Pioneers* (Prime: South Western Saskatchewan Oldtimers' Association, 1994), 3.

wrote: "Some of the Indians have ploughed and worked remarkably well, which only tends to prove that those who wish can learn as readily as the whites.[197] In June 1881, Dewdney stated that the "Indians appear to have displayed considerable pride in making gardens for themselves."[198] But, in Dewdney's mind, the Indians that he associated with Maple Creek were not yet at their reserves:

> After Mr. Wadsworth arrives, should any of the Indians who are here desire and make up their minds to settle on reserves this fall, I will, with your permission, get large farms broken up this year so that next spring the land will be in proper condition to work and raise whatever is planted.[199]

First Attempt to Settle the Assiniboine Band at Maple Creek, June 1881

The spring of 1881 saw a setback to the government's plans to encourage more Treaty 4 Indians to settle around Qu'Appelle. Dewdney had held a council at Qu'Appelle with Indians he considered "so contented" that he encouraged one chief from Crooked Lake reserve to go to Fort Walsh and "advise his young men to come home."[200] This plan backfired:

> [O]n arriving at Fort Walsh he acted in a manner diametrically opposite to that which he had voluntarily promised to observe, and it was reported to me that he had told the Indians that the Government was starving them and that some of his relatives had died last winter from the effects of starvation.[201]

---

197 Dewdney to recipient unknown, May 14, 1881, Canada, Parliament, *Sessional Papers* 1882, No. 6, "Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881," xxxi (ICC Documents, p. 89).

198 Dewdney to recipient unknown, June 8, 1881, Canada, Parliament, *Sessional Papers*, 1882, No. 6, "Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881," xxxii (ICC Documents, p. 90).

199 Dewdney to recipient unknown, June 8, 1881, Canada, Parliament, *Sessional Papers*, 1882, No. 6, "Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881," xxxii (ICC Documents, p. 90).

200 Dewdney to Superintendent General, January 1, 1882, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), 37-38, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports, Acts, Sessional Papers, vol. 1, doc. 9).

201 Dewdney to Superintendent General, January 1, 1882, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* (Ottawa, 1882), 37-38, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," January 1998 (ICC Exhibit 10A and 10B, Annual Reports,

This impression was difficult for the government to counteract; moreover, the Cypress Hills Indians were not well disposed to settling in the vicinity of Maple Creek Farm.

In June 1881, Inspector Wadsworth set out from Fort Walsh to identify other lands for reserve purposes.[202] He began by going east of the Cypress Hills to Maple Creek Farm, taking with him Piapot, "the principal Chief here of the Cypress Mountain Crees," and some of his head men.[203] The Assiniboine were not ready to cooperate with Wadsworth:

> I had a council meeting with the Assiniboine and requested the four chiefs to accompany me and see the country and show me where they wished to take a Reservation. They declined to do this without giving reasons, nor could I change their resolutions.[204]

On this occasion, Piapot did the required tour with Wadsworth and picked a spot for his reservation about 10 miles north of Maple Creek:

> Upon my return I again held a meeting with the Assiniboine and told them I could not consent to their taking a reservation in this part of the country, and that I was prepared to send them to a good one at either little Touchwood Hills, Qu'Appelle or Crooked Lake.
>
> "The Man Who Took the Coat" speaking for them, "said they wished to go to" (Describing the country where Piapot had chosen) and which is not sufficient in extent for them too, particularly as the Crees and Assiniboine are not good enough friends to be such near neighbours.
>
> I then reminded the Chief that he had stated last winter to Mr. English (vide Mr. English's letter) that he was willing to go anywhere north he was desired to go. He replied, he never said so. ... but there is no doubt in my mind English had not interpreted these Indians correctly whether willfully or not I will not state.

Acts, Sessional Papers, vol. 1, doc. 9).

202 Wadsworth to Dewdney, July 3, 1881, NA, RG 10, vol. 3744, file 29506-1(ICC Documents, pp. 104-10).

203 Wadsworth to Dewdney, July 3, 1881, NA, RG 10, vol. 3744, file 29506-1(ICC Documents, pp. 104-10).

204 Wadsworth to Dewdney, July 3, 1881, NA, RG 10, vol. 3744, file 29506-1(ICC Documents, pp. 104-10).

> Piapot got up and said that the reservation he had selected was no new place to him, that he and "Little Pine" had picked it out long ago, and that it was marked by a pile of stones (I did not see them) and that he claimed it.
>
> Here was a dilemma: These large bands of Indians choosing the same ground. Had it not been for this claim of Piapot on behalf of himself and "Little Pine" I would have telegraphed you for permission to settle the Assiniboines here: as it now stands I don't think it would be right to do.[205]

Agent Allen's July 5, 1881, account of the tour confirms Wadsworth's report, but it also expresses Allen's discomfort at being connected to English through the Assiniboine.[206] Allen distrusted English and was suspicious of the Assiniboine's motives:

> It was quite apparent that some secret influence had been at work to induce these Indians [Assiniboine] to ask for that particular location [Piapot's]. I am inclined to believe from what I have seen and heard that the Assiniboine would have gone north to take up a reservation had not a secret power been in their midst advising them contrarily ...
>
> The crops at the [Maple Creek] farm looked extremely well and only a small portion remained to be fenced. I expect we will have a very large return of wheat and oats and should other reservations be taken up by Indians in this Mountain we will have sufficient to seed very large farms from what will be raised this year at Maple Creek. If it is the intention of the Government to locate any more Indians in this district, I trust same will be accomplished this year so that we will be able to break up large tracts of land on each reservation and have the ground in good condition for spring crops ...
>
> Mr. Wadsworth informed me that Mr. English had reported to you [Dewdney] during the winter that the Assiniboine wished to go to Touchwood Hills. I was aware you had heard a rumour to that effect from the tenor of one of your letters wherein you stated that such [illegible] that he never stated such a thing. Mr. Wadsworth asked him at Maple Creek if he had expressed a desire to go to Touchwood Hills and he replied that he had not, that this was his home and country, and he wished to remain here. I cannot understand the motive that prompted Mr. English to report this to you without sending it through me ... Had the Assiniboine expressed a desire to me or had Mr. English informed me of their wish (which he should have been obliged to do) to go to Touchwood Hills so that I would have known their feeling, I would have asked in conjunction with same. It is very difficult to manage Indians at any

---

205 Wadsworth to Dewdney, July 3, 1881, NA, RG 10, vol. 3744, file 29506-1(ICC Documents, pp. 104-10).

206 Allen to Dewdney, July 5, 1881, NA, RG 10, vol. 3757, file 31397 (ICC Documents, pp. 91-96).

> time but now particularly when those working directly with them, as a farming Instructor is, and who does not work in perfect accord with the Agent I might state that Mr. English having been Farming Instructor previous to my appointment, and having full management of this reservation feels the restraint of official interference and even went so far as to say, when my appointment was made known here, last summer, that it didn't make any difference to him, that he was employed by the Government, and the Agent would have nothing to do with him. I have informed you of this matter to let your mind into the innate feelings of Mr. English from time to time are giving vent to themselves.[207]

How, or if, the Assiniboine came to consider the Touchwood Hills is unclear. In this letter, Allen states that English had what amounted to "full management of this reservation."[208] Whether Allen was referring to Maple Creek or the Assiniboine reserve in the Cypress Hills is not entirely clear.

In any case, the only result of Allen's complaint against English seemed to be that Sir Cecil E. Denny, and not Allen, served as the Indian agent at Fort Walsh from the fall of 1881.[209] The English-born Denny arrived in Canada in 1874 via the United States to obtain a commission as captain in the new NWMP. He left for Fort Walsh from Calgary or Fort Macleod in the fall of 1881. In 1882, he resigned from the NWMP to carry out his duties as Indian agent.[210]

In Denny's autobiography, *The Law Marches West*, he recalls driving "with Lieutenant-Governor Dewdney from Macleod to Fort Walsh to take charge as Indian Agent of the Crees and Assiniboine at that place." The events that followed were summed up by Denny: "I succeeded after tedious negotiations in persuading them to their different reservations, the Crees to the north and the

---

207 Allen to Dewdney, July 5, 1881, NA, RG 10, vol. 3757, file 31397 (ICC Documents, pp. 91-96).

208 Allen to Dewdney, July 5, 1881, NA, RG 10, vol. 3757, file 31397 (ICC Documents, pp. 91-96).

209 Denny to Dewdney, November 1, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 138-42).

210 A.C. Rutherford in Sir Cecil E. Denny, *The Law Marches West*, ed. W.B. Cameron (Toronto: J.M. Dent and Sons, 1939), vii-x. In 1885 Denny took up ranching near Fort Macleod. He subsequently aided the government in various capacities, finally serving as archivist for the province of Alberta until his retirement in 1927 (pp. 156 and 170).

Assiniboine to the east."[211] Early in 1882, Denny was back west in the Treaty 7 area as the Indian agent based at Fort Macleod.

Directions from Ottawa, July 1881

Inspector Wadsworth received clarification regarding the government's policies with respect to rations and settling Indians from Assistant Commissioner Galt on July 13, 1881:

> It is the policy of the Government to keep the Indians on their Reservations as much as possible and to that end to feed there only – and if they choose to roam about the Country they must not be permitted to think that they can go to any Post and receive a similar Ration to those Indians who belong there.
>
> ... Before you leave Walsh, establish a fixed Ration for those who are settled in their Reservations and also a meager ration for those who don't belong to the District and who won't go Home.
>
> ... You must use your discretion in these matters keeping down the expenditure as much as possible while at the same time making sure that peace and order will be preserved. You are on the spot, and in a position to judge how far we can go in endeavouring to insist upon these Northern Indians going Home without causing trouble.[212]

Evidently, Galt at that time still recognized that certain Indians had a right to settle in the Cypress Hills, but feared many others might choose to remain there too.

Headquarters was quick to blur the distinction between Indians who belonged in the Cypress Hills by virtue of having selected a reserve there and those Indians considered to be from the north. On July 16, 1881, Galt wired Deputy Superintendent Vankoughnet to ask: "Can I settle Cypress Mountain Crees and Assiniboine in this locality if I fail to get them to move north ...?" The reply from Vankoughnet on the same day was: "Wadsworth must remain at Walsh should do utmost persuade Cypress Indians take Reserves north before settling them near Walsh."[213]

---

211 Sir Cecil E. Denny, *The Law Marches West*, ed. W.B. Cameron, with a foreword by A.C. Rutherford (Toronto: J.M. Dent and Sons, 1939), 170.

212 Galt to Wadsworth, July 13, 1881, NA, RG 10, vol. 3744, file 1069 (ICC Documents, pp. 97-98).

213 Wadsworth to Dewdney, July 5, 1881, NA, RG 10, vol. 3744, file 29506-1, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 36).

Galt therefore directed Wadsworth two days later to pressure all the Indians to leave the Cypress Hills. To advise Macdonald of this plan, Galt wrote from Winnipeg:

> In reference to the question of giving certain of the Indians their Reservations about Cypress Hills, I beg to say that *in accordance with your instructions* by telegraph I have wired Mr. Wadsworth that he must *use every endeavour to persuade the Indians to take their Reserves North before settling then near Walsh* but I fear the Indians will become obdurate and insist upon remaining where they now are. They have a sort of lingering hope that some day or other the Buffalo will return to our country and that in consequence the Fort Walsh District is the most convenient area to settle in.[214]

From this letter, it appears as though the general instruction to clear the Cypress Hills of Indians originated with the Prime Minister.[215]

Of course, Dewdney had already written Macdonald on November 13, 1880, about relocating the Assiniboine Band from the Assiniboine Reserve to Maple Creek. The more general instructions, which Assistant Commissioner Galt passed on to Inspector Wadsworth and to Agent Allen, paid little heed to a reserve having been selected under Treaty 4 and surveyed in the Cypress Hills for the Assiniboine Band.

CLOSING FORT WALSH, AUGUST 1881

Four or five thousand Cree and Assiniboine assembled in the vicinity of Fort Walsh during the summer of 1881.[216] By mid-summer, Inspector Wadsworth and Colonel Irvine were already urging the Indian Department and the NWMP to abandon Fort Walsh. This action, they thought, would

---

214 Galt to Superintendent General of Indian Affairs, July 18, 1881, NA, RG 10, vol. 3744, file 29506-1(ICC Documents, pp. 111-13). Emphasis added.

215 John A. Macdonald was Superintendent General of Indian Affairs from 1878 to 1883 and in 1887. Edgar Dewdney succeeded him, holding the position until 1892. Lawrence Vankoughnet was the Deputy Superintendent General of Indian Affairs from 1874 to 1893. Sarah Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy* (Montreal & Kingston: McGill-Queen's University Press, 1990), app. 1.

216 Canada, Parliament, *Sessional Papers*, 1882, No. 6, "Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881" (ICC Documents, pp. 86-90).

accomplish the department's objective of making the Indians go north and save it money.[217] Faced with the challenge of paying treaty money at Fort Walsh and knowing the government's few men were in danger of losing a possible power struggle there, Wadsworth pointed out the obvious to Galt on August 8, 1881: "[I]f this Post & Agency are to be continued, the former must be strengthened or no Indian Agent can manage or carry out orders regarding the Indians."[218]

Ten days later, Wadsworth wrote Deputy Superintendent Vankoughnet about closing Fort Walsh:

> I still adhere to my opinion that the only peaceable way to get them North is to abandon this place. Should the buffalo remain in the country I suggest a postponement of this course, for in that case the whiskey traders have to be looked after: when the Indians have nothing to trade there is no liquor traffic.[219]

None of the bands wanted to go north, Wadsworth wrote. He attributed this reluctance to the ease with which they were receiving rations at Fort Walsh, whereas further north they had to work for rations.[220] He also considered that peaceable "removal" would permit the government to save face should the Indians' situation deteriorate – the government could not be called upon to provide rations on humanitarian grounds if it had no representatives in the area:

> Colonel Irvine ... was quite in favor of this plan of removal, viewing it in the same light as I did, that instead of coming to loggerheads with the Indians through forcing them to leave here, they can be left helpless with no other course than to follow us, which in my opinion would increase our prestige with them, thus to remain here and

---

217 E.T. Galt to recipient unknown, August 5, 1881 (ICC Documents, p. 117), and T.P. Wadsworth to recipient unknown, August 13, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 118-19).

218 T.P. Wadsworth, Inspector of Indian Agencies and Farms, to E.T. Galt, Assistant Indian Commissioner, August 8, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 120-23).

219 Cited in Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt III, p. 6).

220 T.P. Wadsworth, Inspector of Indian Agencies and Farms, to L. Vankoughnet, Deputy Superintendent General of Indian Affairs, August 29, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 124-35).

> be forced to yield to their wishes against our own judgement in fact it would be a moral [illegible].[221]

After Wadsworth and Colonel Irvine had "explored the country adjacent to the Cypress Mountains, and which was spoken of as the country they [the Assiniboine] would choose to settle in," Wadsworth wrote again from Fort Walsh to elaborate on his reasons for advocating closure of the fort and for driving the Indians far from the Cypress Hills.[222] He concluded that simply leaving the hills to avoid the problem of summer frosts would create another problem: an alternative reserve in adjacent country located eight or 10 miles from timber. To illustrate the difficulties he anticipated with this course of action, Wadsworth wrote:

> I have seen the result of locating Indians a distance from timber practically demonstrated in the situation of the present Reservation altho' a year and a half have elapsed since the Indians first settled there not a house for these has been built during last winter the fences were used as fuel, and it has taken the greater part of this summer after the crops were put in to replace these to be again burned (possibly) this coming winter.[223]

Wadsworth recognized that the area could be productive, but, as this August 29, 1881, letter demonstrates, he cast doubt over the Assiniboine's ability or, more correctly, their future opportunity to farm there:

> That the land has made a wonderful return to us, and should have had two consecutive crops [illegible] a yield and sample of wheat equal to any in the Territories prove that it is adapted for agriculture but *to allow our Indians to settle* there would I am afraid never prove a success particularly as other sections of this

---

221 T.P. Wadsworth, Inspector of Indian Agencies and Farms, to L. Vankoughnet, Deputy Superintendent General of Indian Affairs, August 29, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 124-35).

222 T.P. Wadsworth, Inspector of Indian Agencies and Farms, to L. Vankoughnet, Deputy Superintendent General of Indian Affairs, August 29, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 124-35).

223 T.P. Wadsworth, Inspector of Indian Agencies and Farms, to L. Vankoughnet, Deputy Superintendent General of Indian Affairs, August 29, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 124-35).

> great country contain the requisites of timber, good land, and pure water, plentiful and combined.[224]

It is hard to know whether the Indians with whom Wadsworth was meeting at Fort Walsh had absorbed or embraced the concept of being permitted to settle by the government. Given that they had been putting in crops, they might have perceived the harvest as a return of the land to them.

Fort Walsh, Winter 1881–82

On November 1, 1881, Agent Denny wrote to Dewdney that Little Child and "a large camp of Assiniboine are near the foot of the mountain." With respect to the farm, Denny advised that English was short-handed, certain Indians had agreed to go to Qu'Appelle, and he had announced that the farm would be closed:

> Mr. English has all the potatoes dug, and keeps 10,000 lbs for seed and will have about 60,000 lbs to turn over to the police, with those got from the Indians who have agreed to go to Qu'Appelle. ...
>
> I had to allow Mr. English to pay some Indians in cash to get the crops out, as snow was on the ground and I was afraid they would freeze before being got out. I shall have to hire a good man to help thresh the grain as there is not help enough at the farm. If it is the intention of the Government to close the farm next Spring, as I have already told the Indians, it might be well to do so after the grain is hauled in, as the Indians will congregate at that place and more or less has to be given them, in case they are starving.[225]

---

224 T.P. Wadsworth, Inspector of Indian Agencies and Farms, to L. Vankoughnet, Deputy Superintendent General of Indian Affairs, August 29, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 124-35). Emphasis added.

225 Denny to Dewdney, November 1, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 138-42).

left to right: Stabbed Many Times and Mrs Carry the Kettle
(ICC Exhibit 8, photo 8)
Provincial Archives of Manitoba EM 465

Denny did not specify which Indians had "agreed to go to Qu'Appelle."

By November 6, 1881, there was a foot of snow at Fort Walsh.[226] Cree and Assiniboine who had gone south of Fort Walsh looking for buffalo along the Missouri River late in the summer of 1881 had returned starving, some without horses.[227] Reluctantly, Agent Denny found he had to

---

226 Agent Denny, Fort Walsh, to Indian Commissioner, Winnipeg, November 16, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 146-50).

227 Sir Cecil E. Denny, *The Law Marches West*, ed. W.B. Cameron, with a foreword by A.C. Rutherford (Toronto: J.M. Dent and Sons, 1939), 169.

increase rations at Fort Walsh.[228] Most of Man Who Took the Coat's camp had come in, but were expected to leave that day. Poor Man's camp was in, and Long Lodge, who had about 15 lodges "towards the foot of the mountain," was thought to be "on the way in."[229] Piapot, with 30 lodges, was camped about 40 miles from the fort.[230] Denny gave ammunition to the most able of the destitute Indians coming in and sent them out again to hunt,[231] but he was already working on the problem of how to get the Assiniboine to leave the area:

> I have been talking to Bear's Head and the Poor Man (Assiniboine Chiefs) about their moving to Qu'Appelle but can get no answer out of them as yet. Mr. English seems to be liked by the Assinaboines [sic] & I think that if he could go with them in the spring to Qu'Appelle, it would not be hard to get them off. With your permission I would speak to Mr. English about going with them.[232]

In the end, that is what happened.

By December, Denny was also advocating closing Fort Walsh. Convinced that, with the NWMP and the Indian Department there, the Indians would always make Fort Walsh "a center," Denny considered "the only way to get them on to their reserves is for this place to be abandoned."[233] He advised Dewdney on December 6, 1881, that he was announcing this plan:

> I have been and am still notifying all the Indians that the place is going to be abandoned next spring since some of the Chiefs have already promised to go to

---

228 Denny to recipient unknown, November 9, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 143-45).

229 Agent Denny, Fort Walsh, to Indian Commissioner, Winnipeg, November 16, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 146-50).

230 Agent Denny, Fort Walsh, to Indian Commissioner, Winnipeg, November 16, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 146-50).

231 Denny to Dewdney, November 20, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 151-54), and Denny to Dewdney, December, 14, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 190-96).

232 Denny to recipient unknown, November 9, 1881, NA, RG 10, vol. 3744, file 29506-1 (ICC Documents, pp. 143-45).

233 Denny to Indian Commissioner, 6 December 1881, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 181-89).

> Qu'Appelle I tell them all that if they go before me [sic] as they will get help to go with but if not they will be out of luck.[234]

Any hesitancy Dewdney may have felt about this approach was not apparent until February 1882.

Roughly a week before Denny left Fort Walsh, his replacement, Acting Indian Agent J.N. McIlree of the NWMP, had also written to Dewdney. Ostensibly seeking direction, he actually advised Dewdney of his intention to close the farm, which by this date must have been a reference to Maple Creek Farm.[235] In a letter dated January 9, 1882, McIlree outlined the current state of affairs at Fort Walsh:

> I have before the beginning of this month issued very little food and have kept the Indians out hunting and fishing as iong as the buffalo lasted but have had to give in at last and put a good many more Indians on the ration. ... I should think there were about 2,000 Indians round the Cypress, half of which number are here.
>
> ... [Piapot] said he would go next spring to Qu'Appelle ... he also wishes his brother Little Pine to go with him ... I think we can get these two camps down in the spring ...
>
> I have sent three or four lodges north and a few to the Qu'Appelle this winter ...
>
> If the farm is to be worked it will keep the Indians round and a large outlay will have to be made in the way of horses, etc. as there are now only two horses on the farm two but police horses having died this winter and the rest with a wagon having been sent to Qu'Appelle last fall, I have been telling the Indians that the farm would be abandoned next summer telling them at the same time they would get a better place at Qu'Appelle. As yet I have heard no decided answer from the Assiniboines, who do not like to leave their country.
>
> All the Assiniboine Chiefs except Long Lodge are here. The Assiniboine tell me that they have heard that Long Lodge has joined the Southern Assiniboines and does not intend to return here.[236]

---

234 Denny to Indian Commissioner, 6 December 1881, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 181-89).

235 J.N. McIlree to Dewdney, January 9, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 208-15).

236 J.N. McIlree to Dewdney, January 9, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 208-15).

McIllree mentioned that smallpox was spreading in Montana. He thought it would send some people back "if it gets among our Indians."[237]

Denny formally handed over the Fort Walsh Indian Agency to McIllree on January 17, 1882. Denny wrote to his superior that he had informed the Indians of this development. In the same letter he noted:

> English came in today and has been informed of the change, he will keep on the same.
>
> It would be well to have it settled whether the farm is to be carried on next spring or not as a great deal of the wheat that would have to be saved for seed could be fed to Indians, also the potatoes.
>
> I think most of the Assiniboine will go to Qu'Appelle in the spring, if encouraged to do so.[238]

Preoccupied as the Indian agents were with managing the overwhelming numbers of Indians who gravitated to Fort Walsh, it appears that they, too, lost sight of the fact that a reserve had already been selected by and surveyed for the Assiniboine Band in the Cypress Hills.

Peter Hourie, an interpreter for the government, wrote to Dewdney from the "Indian Office, Fort Walsh," on January 25, 1882, expressing regret that Denny had to leave Fort Walsh. Hourie and Denny had been "getting on very well with the Indians," to the point that Hourie thought "we would have got them all to go down to Qu'Appelle."[239] Hourie was still trying to persuade them on his own, telling them that, if they did not "go and take up good Reserves," they "would injure themselves in the end, for soon the country will be filled up by white people and the best of the land taken."[240]

---

237 J.N. McIllree to Dewdney, January 9, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 208-15).

238 Agent Denny to recipient unknown, January 17, 1882, NA, RG 10, vol. 3577, file 444 (ICC Documents, pp. 216-18).

239 Peter Hourie to Dewdney, January 25, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 219-21).

240 Peter Hourie to Dewdney, January 25, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 219-21).

Second Attempt to Settle Band at Maple Creek, February 1882

A February 1, 1882, report by Colonel Irvine anticipated the abandonment of Maple Creek Farm, the reserve in the Cypress Hills, and Fort Walsh:

> [T]he Indian Department do not consider that the farming operations at Maple Creek have been successful in the past, and that they are still less likely to prove so in the future. I am also of the opinion, so I understand is the Indian Commissioner, that all the Indian Reservations (excepting those in the Macleod district) should be established further north. If, then, Maple Creek Farm is to be abandoned and another reservation located in the vicinity of the Cypress Hill, I considerthat retaining Fort Walsh as a Police Post will act in a manner calculated to become detrimental to the police of the Government, inasmuch as retaining this post offers an inducement to the Indians of the north to abandon their reservations and move towards Fort Walsh, now that a Police post is maintained and an Indian Agent stationed there.[241]

Although there is no reference to it in Irvine's report, Dewdney still recognized, in February 1882, that the Assiniboines had a right to decide about moving away from the Cypress Hills. Asked to report on Agent Denny's proposition to discontinue Maple Creek Farm in the Fort Walsh District, Dewdney wrote to Macdonald:

> [I]f [the Assiniboine] assent to go north we will abandon the farm. If not as this country is the Assiniboines old hunting ground I do not see how we can force them to move unless with their consent.[242]

Based on the documentation assembled for this claim, it appears that Dewdney and Walsh were the individuals most mindful of the Assiniboine Band's connection to the Cypress Hills. Four and a half years earlier, Walsh had asserted that "[t]he Assiniboine must be paid here [in the Cypress

---

241 Canada, Parliament, *Sessional Papers*, 1882, No. 18, "Annual Report of the Department of the Interior for the Year Ended 30th June, 1881," Part III, North-West Mounted Police Force, A.G. Irvine, Commissioner, North-West Mounted Police, to Minister of the Interior, February 1, 1882, as cited in Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt III, p. 9).

242 Indian Commissioner Dewdney to Superintendent General of Indian Affairs, February 13, 1882, no reference available (ICC Documents, p. 228), and Acting Agent McIllree to Dewdney, February 15, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 224-27). The second letter confirms that the discussion is about Maple Creek Farm, and not the farm begun on the Assiniboine reserve.

Hills], this being their country and the majority of them could not be induced to go elsewhere."[243] Dewdney's letter reminded Macdonald of this need for consent. Just two days after Dewdney wrote to Macdonald, Agent McIllree informed Dewdney that the Assiniboine – represented by Man Who Took the Coat, Bear's Head, and Poor Man, with Long Lodge absent – "wanted to remain in this section of the country and settle permanently on Maple Creek reserve."[244] On Dewdney's instructions, McIllree "had urged on them the expediency of removing from the Cypress Hills and taking up a reserve somewhere north of here or in the Qu'Appelle country." The reasons McIllree gave the Assiniboine are not outlined in his letter to Dewdney.[245]

As expressed by McIllree, the Assiniboine's main reasons for not wanting to move were "that they had been brought up in the Country, that although they had given up their Country to the Queen, she had promised to give them a Reserve in whatever part of the Country they liked to pick out, that they did not like the Northern Country or the Indians living there"[246] Man Who Took the Coat hoped the government would not be angry with him if he wanted to remain where he was.[247]

One week later, Dewdney was prepared to give the Assiniboine their Treaty 4 entitlement of oxen and implements "to farm at Maple Creek" if they were not to be persuaded to go to "settle upon a Reservation near Qu'Appelle."[248] But Dewdney feared the influence this exception could have on others. He reminded McIllree that, if the Assiniboine took their treaty-allotted agricultural assistance at Maple Creek, no other Indians would be able to stay there:

---

243 Report, J.M. Walsh to Minister of the Interior, E.A. Meredith, October 28, 1877, Canada, Parliament, *Sessional Papers*, 1879, No. 10, xxxi-xxxiv (ICC Documents, pp. 39-42).

244 Acting Agent McIllree, Fort Walsh, to Indian Commissioner Dewdney, Ottawa, February 15, 1882 (ICC Documents, pp. 224-27).

245 Acting Agent McIllree, Fort Walsh, to Indian Commissioner Dewdney, Ottawa, February 15, 1882 (ICC Documents, pp. 224-27).

246 Acting Agent McIllree, Fort Walsh, to Indian Commissioner Dewdney, Ottawa, February 15, 1882 (ICC Documents, p. 225).

247 Acting Agent McIllree, Fort Walsh, to Indian Commissioner Dewdney, Ottawa, February 15, 1882 (ICC Documents, p. 225).

248 Dewdney to McIllree, February 22, 1882, NA, RG 10, vol. 3577, file 444 (ICC Documents, pp. 229-32).

> No Cree Indians nor half breeds will be permitted to occupy the Reserve or be allowed to farm there, and if the Assiniboine allow the Crees to stay about and help eat up their grub they (the Assiniboine) will suffer, for only a supply will be sent in sufficient for the Assiniboine.[249]

Dewdney concluded his instructions to McIlree by stating that he hoped the Assiniboine would not remain at Maple Creek:

> Should the Assiniboine change their minds and agree to go to Qu'Appelle, assistance will be afforded to enable them to do so, and as this is the particular wish of the government, you should exhaust every means to bring it about before proceeding with farming at Maple Creek.[250]

No documentation in this inquiry itemizes precisely the agricultural items the Assiniboine may have been given at their reserve in the Cypress Hills. Marginalia on an April 26, 1882, letter from Dewdney to the Superintendent General alludes to "implements ... in Treaties 4 & 6 and ... the nos. of axes and hoes in the various reserves."[251] It seems reasonable to assume that there would have been some farm implements in use and livestock present when English was overseeing the tending of crops on the lands surveyed by Patrick in the Cypress Hills.

Move to Qu'Appelle, Spring 1882

In keeping with what seemed to be the message from Macdonald, McIllree's orders from the Indian Commissioner's office were that "the express wish of the Government was to see all Indians North of the CPR."[252] McIllree continued to press the Indians to move north, but they advised him they would not answer until after they met with Colonel Irvine.

---

249 Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 47).

250 Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 47).

251 Dewdney to Superintendent General, April 26, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 235-36).

252 McIllree to Dewdney, December 2, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 316-28).

Irvine was not at Fort Walsh during the winter of 1882.[253] Nevertheless, a March 1882 telegram directed McIllree: "Transport all destitute Indians ready to move north as economically as possible."[254] Irvine returned to the fort on April 8, 1882, ready to pursue the government's plan with new vigour:

> Soon after my arrival at Fort Walsh in April last, I commenced holding councils, with Indians (Crees and Assiniboine) with a view to persuading them to move northward to settle upon the new reservations.[255]

The Assiniboine put up considerable resistance, which Irvine seemed to understand:

> In the case of the Assiniboine I also experienced much trouble. These Indians have always looked upon the Cypress Hills as their home. It is not therefore, to be wondered at that I had considerable difficulty in inducing them to accept a new and northern reserve.[256]

As Irvine recalled it, the Assiniboine did agree to move to "new" reserves:

> "The-man-that-took-the-coat" or "Jack" was the first Assiniboine Chief who consented to proceed to the reservation allotted him by the Government.
>
> I afterwards secured a promise from "Long Lodge," "The Poor Man," "Bear's Head" that they and their people would accept new [sic] the reservations as allotted by the Indian Department. "Long Lodge's" reservation near Qu'Appelle, "The Poor Man," and "Bear's Head," in the vicinity of Battleford, their previous reservations having been at Maple Creek near Fort Walsh.

---

253 McIllree to Dewdney, December 2, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 316-28).

254 McIllree to Superintendent General of Indian Affairs, March 23, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 233).

255 Report of Irvine, Canada, "Settlers and Rebels: Being the Official Reports to Parliament of the Activities of the Royal North-West Mounted Police Force from 1882-1885," as cited in Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt III, p. 11), and Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 51).

256 Report of Irvine, Canada, "Settlers and Rebels: Being the Official Reports to Parliament of the Activities of the Royal North-West Mounted Police Force from 1882-1885," as cited in Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt III, p.11).

> The Assiniboine chiefs "Jack" and "Long Lodge" left Maple Creek farm in charge of Mr. English, farm instructor, being accompanied by a small detachment of policy and straggling Crees belonging to "Little Child's" and "Sparrow Hawk's" bands they reached Qu'Appelle on the 1st of June. I was afterwards informed that their reserve had been selected at Indian Head, about twenty-four miles south-east of Qu'Appelle.
>
> "Bear's Head" and "Poor Man" (Assiniboine) left Fort Walsh on the 23d of May for Battleford, they were accompanied by a constable of the force who issued rations while en route. They arrived at Battleford on the 17th June.[257]

In a later report to Dewdney, McIllree detailed some of the groups that had agreed to move to these "new" reserves:

> All the chiefs in the neighborhood assembled to meet [Colonel Irvine] and day after day the talk went on whether they would move as desired or remain where they were. All at last agreed to do as the Govt wished. The Assiniboine first, though they felt it hard to leave the Cypress Hills. Then Piapot said he would go and these were really the only two bodies of Indians who had any claim to call the Cypress Hills their own. The remainder belonged to the Saskatchewan Valley mostly. The Assiniboine and Piapot's band being very poor and owning no horses, it was agreed that transport should be furnished them. A few other smaller bands were promised the same privilege. As it was impossible to [illegible] transport at that time the Assiniboine were sent to Maple Creek Farm and the Crees to David Lake, where Piapot had been camped all winter.
>
> ...
>
> On the 12th Long Lodge, Head Chief of the Assiniboine, got in. He after numerous interviews with Col. Irvine said he would go to Qu'Appelle and was sent out to Maple Creek Farm to the fishing ground.[258]

---

257 Report of Irvine, Canada, "Settlers and Rebels: Being the Official Reports to Parliament of the Activities of the Royal North-West Mounted Police Force from 1882-1885," p. 3, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 51).

258 McIllree to Dewdney, December 2, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 316-28).

Maple Creek Farm was closed once the Indians were bound for their respective reserves.[259] About this time, April 1882, the Crown granted John Adams a timber lease to cut timber in the Cypress Hills.[260]

From Fort Walsh, Irvine advised Ottawa, on April 20, 1882, that all Assiniboine had agreed to move and that some had already left:

> All the Assiniboine have agreed to go north. South Assiniboine to Qu'Appelle, North Assiniboine to Battleford. The Man That Took the Coat, Assiniboine Chief, with his camp left here yesterday for Fort Qu'Appelle.[261]

Food shortages became a factor in the move. It was not until May 7, 1882, that the Assiniboine actually left Maple Creek Farm for Qu'Appelle in the company of their farm instructor, Mr. English.[262] As McIllree reported:

> On the 7th May having secured sufficient transport, I accompanied Col. Irvine to Maple Creek Farm and made final arrangements for the Indians collected to move the next day, they were both loath to go, but we started according to promise, consisting of the following Chiefs and their bands: Long Lodge, Jack, Little Child, Sparrow Hawk and some independent bodies of Indians going to join their respective chiefs in the vicinity of Qu'Appelle ...[263]

That rations were actually cut off to force the Assiniboine to move was considered by both Mr Gallo and Mr Benson in this inquiry. In his report for Canada in this inquiry, Gallo states that "rations were refused the bands at Fort Walsh *after* they had consented to move north and then

---

259 McIllree to Dewdney, December 2, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 316-28).

260 Russell to Adams, April 22, 1882, RG 15 [incomplete reference], in Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt II, p. 40).

261 Irvine to Fred White, April 20, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 234).

262 Galt to Vankoughnet, May 22, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, p. 400), and Dewdney to Superintendent General, 22 May, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 243-44).

263 McIllree to Dewdney, December 2, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 316-28).

refused to do so,"[264] and "[i]n the spring of 1882 the Cree and Assiniboine were told no further rations would be issued to them while they remained in the Cypress Hills."[265] Similarly, in his report for the First Nation in this inquiry, Benson commented that "McIllree refused rations to anyone not willing to leave immediately for their reserves."[266]

So many Indians had been convinced to go to Qu'Appelle that the government faced difficulty feeding them there.[267] Others who were willing to go could not because the government could not give them enough supplies to make the trip.[268] It was also known that it would be difficult to supply Treaty 4 provisions in full to the Indians on their arrival at Qu'Appelle because of shortages.[269]

Dewdney made plans to meet the Indians on their arrival at Qu'Appelle and reassured Macdonald on April 26, 1882, that he would "endeavour to make them satisfied with the change."[270] In anticipation, Dewdney had instructed the Indian agent at Qu'Appelle, Alan McDonald, to break some land.[271] Two reserve areas were identified:

> I have directed Mr. Agent Macdonald [sic] to get ploughing done in patches of 10 acres about 1 mile apart on the Reserve at Indian Head, south of Qu'Appelle,

---

264 Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 46).

265 Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 46).

266 Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt III, p.12). Benson's citation for this is NA, RG 10, vol. 3722, file 29506-2.

267 Commissioner's Office to Vankoughnet, April 24, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 396-99).

268 McIllree to Dewdney, May 3, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, p. 242).

269 Commissioner's Office to Vankoughnet, April 24, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 396-99).

270 Dewdney to Superintendent General, April 26, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 235-36).

271 Dewdney to Superintendent General, April 26, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 235-36).

> also on the Reserve east of Long Lake, in order that some crop may be put in this spring.
>
> If there is no hitch in getting the Indians to settle on the Reserves, we shall have to provide a number of tools such as axes and hoes. I think it would be well to order 20 doz. axes and handles and the same number of hoes for Treaty 4 and a like quantity for Treaty 6.
>
> I hope to be able to use some of the articles called for in this year's contracts to start the new reserves.
>
> I shall endeavour to carry out the wishes of the Minister and use every exertion to render the Indians satisfied.[272]

A note to the chief clerk on the margin of this letter reads: "Please refer to Mr. Galt's return of implements [illegible] in Treaties 4 & 6 and state the nos. of axes and hoes in the various reserves and the no. of Indians approximately of an age to use such implements."[273]

Irvine was keenly aware of the importance of the Indians being "well received" in the north and treaty obligations being fulfilled. Otherwise, they might not remain there and, Irvine feared, the result would be considerable expense and a threat to law and order:

> If these recommendations are not acted on, I feel that I am not far astray in predicting a general stampede southward. Should this once occur, the final settlement of the Indians on allotted reservations will be materially retarded.
>
> The experience of our neighbour Americans cannot be without its lesson to us. In their case the non-fulfilment of treaty obligations gave rise to much of the trouble, and expense they had been put to in the governance of their Indians. It is worthy of note too that even with a very strong force at their command it has not been found practical to force Indians to remain on a particular reservation.[274]

Removing the Assiniboine Band from the Cypress Hills did not immediately solve the government's problem at Fort Walsh. In May 1882, about the time the Assiniboine were on their way to Qu'Appelle, Big Bear and hundreds of his Cree followers arrived at Fort Walsh, putting pressure

---

272 Dewdney to Superintendent General, April 26, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 235-36).

273 Dewdney to Superintendent General, April 26, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 235-36).

274 Irvine to Fred White, Comptroller, May 20, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 249-52).

back on the fort and the virtually abandoned Indian Agency there.[275] Moreover, events later proved that the Assiniboine had not seen the last of the Cypress Hills.

THE "NEW RESERVE," INDIAN HEAD, SUMMER 1882

Today, Indian Head, Saskatchewan, is a town south of the Qu'Appelle Valley, 68 kilometres east of Regina. It was named after the hills south of the townsite. The town's first settlers moved to this location in Saskatchewan's richest farming area in 1882, or just before the Canadian Pacific Railway line went through.[276]

In June 1882, in preparation for the arrival of Indians from the Cypress Hills, Agent McDonald requisitioned livestock and agricultural implements in accordance with the undertakings of Treaty 4.[277] Similarly, surveyor John C. Nelson, assisted by David Macoun, identified a site at Qu'Appelle on which the relocated Indians could settle.[278] McDonald, seeing that the site first chosen by Nelson lacked wood, water, and hay, selected another location about nine miles east. The new site was broken for seeding before the Assiniboine arrived.[279]

In early May, Nelson surveyed the "Indian Head Reserves" (220 square miles) for the bands of Man Who Took the Coat, Long Lodge, and Piapot. He described it as "an attractive place for these unsettled Plains Indians. The soil is of the choicest quality; there is a good proportion of hay grounds, wood and plenty of water, and the Canadian Pacific Railway is only a few miles to the north."[280] McDonald was also optimistic:

---

275 Irvine to Fred White, Comptroller, May 20, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 249-52), and Galt to Superintendent General of Indian Affairs, May 22, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 243-44).

276 "Indian Head," *The Canadian Encyclopedia*, 2nd ed. (Edmonton: Hurtig, 1988), 1055.

277 Requisition for cattle, implements, etc., Agent A. Macdonald [sic], June 18, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, p. 261).

278 John Macoun was the professor of botany and geology who had explored the Cypress Hills in 1879 and pronounced them unfit for agriculture. It is not known if the two were related.

279 McDonald to Galt, June 19, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 253-56).

280 Dewdney to McDonald, December 29, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 354-55).

> I feel certain the Indians will be pleased with their reserve and do well thereon. Its close proximity to the large farms of the Qu'Appelle Valley Farming Company will at all times enable the good workers to secure employment at such times as their attention is not absolutely required on their Reserve for, of course, I shall see that they do not neglect their own to work for outsiders. Besides the farming company, the line of Railway passing within a comparatively short distance from the Reserve, together with the fact that all around them, the land is being rapidly and thickly settled upon by immigrants, assures me that those Indians will not remain long a heavy burden on the Government. The past record of the Assiniboines shows that they are good workers and with the facilities to procure work as I have pointed out surrounding them, I have no fear as to their ultimate future, for of course, we will have to feed and help them until they get settled.[281]

The Assiniboine (numbering 157 with Man Who Took the Coat and 97 with Long Lodge) arrived at Qu'Appelle "from Ft. Walsh District" with English on June 9, 1882.[282] The following day Dewdney and McDonald supplied them with three days' rations of flour and bacon, "together with some tea, tobacco, and pemican as presents from the Commissioner."[283] On June 12, the Indians met with Dewdney in Major Walsh's tent.[284] McDonald's account of the meeting mentioned "signs of discontent" and "unwillingness to go to their Reserve," but, he reported, the Chiefs agreed to view it with Dewdney and Walsh. Once they had seen it, McDonald wrote that "they expressed themselves perfectly contented with the choice of the Reserve that had been made for them, and stated their willingness to go off as soon as we could get transport."[285] At subsequent meetings with the agent and the Commissioner, the terms of Treaty 4 were read and explained to the Assiniboine.[286] The chiefs each received a yoke of oxen, a harness, and a wagon, with the explanation that they would get the rest promised under treaty once they had settled on their Indian Head reserve.[287]

---

281 McDonald to Galt, June 19, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 253-56).

282 McDonald to Galt, June 20, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 257-60).

283 McDonald to Galt, June 20, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 257-60).

284 McDonald to Galt, June 20, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 257-60).

285 McDonald to Galt, June 20, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 257-60).

286 McDonald to Galt, June 20, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 257-60).

287 McDonald to Galt, June 20, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 257-60).

On June 21, 1882, Man Who Took the Coat's band (255 people) and Long Lodge's band (91 people) set out from Qu'Appelle to go to their reserve at Indian Head. Piapot and his followers had not yet arrived but three areas were selected within the reserve for the respective bands.[288] By July 18, 1882, McDonald reported that "'Jack' (Man Who Took the Coat) and his Indians were all hard at work and perfectly happy" on the Indian Head reserve. They were "under the charge of Mr. Instructor Provost ... [but] owing to the lateness of the season, only a few bushels of potatoes were planted."[289]

On arriving in late July 1882, Piapot made it clear to McDonald that he had expected to choose his own reserve, not to have it chosen for him.[290] McDonald countered that "they were to choose reserves for themselves wherein they might farm."[291] Stressing that the other Chiefs had done so and "were contented" and that Piapot was the "last"to go on his reserve,[292] McDonald convinced Piapot, with a present of "Tobacco, Pemican 3 bags, dried meat, 2 bags, and 1 ox," to tour the other reserves with him and to "inspect the location selected for him."[293]

Long Lodge's band was less than content.[294] Lack of fresh meat and vegetables and the resulting illness soon affected morale at the Indian Head reserves. McDonald's instructions were to issue as few rations as possible to Indians who did not work.[295] McDonald was frustrated by the restrictions on his purchasing power, since he knew this lack of rations could jeopardize the effort to settle the Indians on the northern reserves.[296]

---

288 McDonald to Galt, July 12, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 265-74).

289 McDonald to Superintendent General of Indian Affairs, December 29, 1882 (ICC Documents, p. 357).

290 McDonald to Galt, July 29, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, p. 290).

291 McDonald to Galt, July 29, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, p. 293).

292 McDonald to Galt, July 29, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, p. 293).

293 McDonald to Galt, July 29, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 296-97).

294 McDonald to Galt, July 18, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 275-79).

295 Dewdney to Superintendent General of Indian Affairs, August 5, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 280-81).

296 McDonald to Galt, July 31, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 283-88).

Long Lodge and 18 lodges were the first to leave the Indian Head reserve,[297] departing in August 1882 for the Wood Mountains and eventually south of the border for the winter of 1882–83. Soon after, Man Who Took the Coat departed apologetically for Fort Walsh.[298] The report of those events shows that the Assiniboine were unhappy, still hoped for a reserve in the Cypress Hills, and were not ready to accept agricultural assistance, at least in the form of treaty-allotted implements:

> The Assiniboine were induced to take a reserve at the Indian Head. They at first appeared fully contented but towards payment time became unsettled and restless, they stated they could not live on bacon, and had always been accustomed to live on fresh beef. In order that they should have no excuse in that respect, I ordered beef three times a week; this satisfied them for a time, but after payment they returned everything that they had received from the Government in the way of tools, etc, and said they must go south. The chief, The-man-that-took-the-coat, came to me with his men and said that he would not leave, as his brother chief, Long Lodge, had done, without telling me why he did not like to stop north; he said he was pleased with the way that he had been treated, but his people did not like the place, that their friends all lived south, and that their old people were buried there, they begged for a reserve in the south.[299]

Agent McDonald's reply was as follows:

> I informed them that the Government did not intend to give any reserve in the south, and if they did so, the American Indians would be continually crossing the border to steal horses, and there would be continual trouble.[300]

---

297 McDonald to Galt, August 1, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, p. 282).

298 Nelson to Superintendent General of Indian Affairs, Canada, Parliament, *Sessional Papers*, No. 5, "Report of the Department of Indian Affairs for the Year Ended 31st December, 1882," 214-15 (ICC Documents, pp. 356-57).

299 Report of Agent McDonald to Superintendent General of Indian Affairs, December 15, 1882, Canada, Parliament, *Sessional Papers*, 1883, No. 5. Gallo cites this as Commissioner Dewdney to the Superintendent General, Indian Affairs, Annual Report for 1882, p. 194, in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 55).

300 Report of Agent McDonald to Superintendent General of Indian Affairs, December 15, 1882, Canada, *Sessional Papers*, 1883, No. 5.

In contrast to the "contentedness" expressed by Agent McDonald, Kaye Thompson's presentation on behalf of the elders of Carry the Kettle First Nation at the May 30, 1997, community session in this inquiry expressed some of the reasons her people were reluctant to settle at Indian Head. The bountiful Cypress Hills were regarded as the Assiniboine's homeland.[301] Their dead were buried in the Cypress Hills, not around Indian Head, where the memory of the deaths of others lingered, even in the name Skull Mountain:

> No one wanted to live in the Indian Head area, where "Wacapaxa" – Skull Mountain, was located since this is the burial grounds of another tribe. This land was not as lucrative in terms of provisions necessary for survival as was Cypress Hills and our people continued to suffer from malnutrition.[302]

Nonetheless, the government curtailed their movements to keep them at Indian Head:

> With the introduction of the permit system, our people were denied the freedom to return to their homeland. It has been told from generation to generation that this reserve in Cypress Hills is there for them always. Elders have always said, "Our heart is not here. Our heart is in Cypress Hills." The old people longed to return to their homeland. Our medicine people continued to return to this area for the purpose of acquiring needed roots, plans, and paint. Pipe keepers have continued to offer the perennial ceremonies required for our dead relatives whom are left behind in the Cypress Hills.[303]

The memory of lives lived and lost in this beautiful but troubled area had not been forgotten in 1882 and remains vivid to this day.

---

301 "Summary of Cypress Hills Claim," presentation of Elder Kaye Thompson at community session 1, May 30, 1997, Maple Creek, Saskatchewan (ICC Exhibit 7, p. 11).

302 "Summary of Cypress Hills Claim," presentation of Elder Kaye Thompson at community session 1, May 30, 1997, Maple Creek, Saskatchewan (ICC Exhibit 7, p. 11).

303 "Summary of Cypress Hills Claim," presentation of Elder Kaye Thompson at community session 1, May 30, 1997, Maple Creek, Saskatchewan (ICC Exhibit 7, p. 11).

Fort Walsh, Fall 1882

Irvine reported some 2000 starving Indians at Fort Walsh in September 1882. They said it was their country and that they intended to remain there. They were asking for food and, if it were not given, Irvine feared, they might "commit depredations" to acquire it.[304] Conscious of their shared confidence-building role, Irvine wrote Dewdney:

> The actual power of the Indians now here, in view of future hostility, is certainly not great. But as it is superfluous to point out to you, an outbreak of any kind would be disastrous, and create universal alarm throughout the country.[305]

Comptroller Fred White of the NWMP was dispatched to investigate. He confirmed that the Indians were desperate and not prepared to leave the area:

> Of course they have asked again to have reservation here & say they may as well starve to death here as on the reservations north and east, but many of them are in such desperate condition that I fear hunger may impel them to commit illegal acts, and as large working parties are now grading the C.P.R. north of here it would be a pity to risk trouble this winter. Limited rations, absence of game, scarcity of clothing and the suffering they must endure this winter owing to the tattered condition of their lodges, will I hope bring them to their senses by next spring.
>
> Under all the circumstances, though with great reluctance, I have telegraphed asking you to send [Agent] McDonald from Qu'Appelle to pay them. He knows who have been paid and who are entitled to pay and for other reasons it is better that the payments should not be made by the Police.[306]

Eventually, McDonald paid Treaty 4 annuities at Fort Walsh in mid-November 1882.[307]

---

[304] Irvine to Dewdney, September 23, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 305-6)

[305] Irvine to Dewdney, September 23, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 305-6).

[306] White to Dewdney, October 17, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, p. 298-300).

[307] McDonald to Dewdney, November 11, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 313-15).

In October 1882, interpreter Peter Hourie reported to McDonald that he would likely have to remain at Fort Walsh for the winter because there were about 290 lodges there.[308] These included Piapot's Crees, some of the Assiniboine who returned from Qu'Appelle (he did not identify the bands), and some Crees from the north and elsewhere.[309] Although the buffalo were reported to be plentiful to the south, American troops were ready to apprehend any Indian hunters who crossed the border, and so a congregation of needy Indians at Fort Walsh was considered dangerous.[310]

In his letter, Hourie also commented on the general state of affairs and on the Assiniboine leaving Qu'Appelle:

> I am of opinion that as long as there will be Indians at this place, that it will give the Government some trouble to keep these people quiet and not only that but it will be the means of creating a row between the two governments.
>
> I hear lately that some of the Assiniboine, The-man-that-took-the-coat had arrived at Wood Mountain. I am sorry that they are all leaving their Reserves if there be any truth in it. What a pity they could not be kept down there.[311]

Wood Mountain was less than 50 kilometres from the border and about 200 kilometres east of Fort Walsh. Man Who Took the Coat stopped there on his way to Fort Walsh.

Since White feared that many Indians would perish from the cold while wintering at Fort Walsh, he urged Dewdney to instruct McDonald to come to the fort to make payments.[312] Correspondence consequently ensued between the Deputy Superintendent General of Indian Affairs, Lawrence Vankoughnet, and John A. Macdonald, about relief supplies, the necessity of sending

---

308 Hourie to McDonald, October 18, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 311-12).

309 Hourie to McDonald, October 18, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 311-12).

310 Hourie to McDonald, October 18, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 311-12).

311 Hourie to McDonald, October 18, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 311-12).

312 Hourie to McDonald, October 18, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 311-12).

F2

Agent McDonald to Fort Walsh, and the concern that "if Piapot is given Reserve south we will not get our Indians to go north."[313]

In the course of instructing Irvine on October 27, 1883, Dewdney blamed this crisis on the NWMP's failure to close the fort when the Indian Agency there was withdrawn.[314]

> I think it is very unfortunate the Post at Walsh had not been abandoned this summer as agreed upon last winter in Ottawa. The Indians will not now believe that the Post is to be abandoned and we will have considerable difficulty in inducing them to leave.
>
> You are aware that the Southern Country is not the Country of the Crees and they should be told that it is no good their making a request to be given Reserves in the South.
>
> I hope you will impress upon the Indians that they have brought their present helpless condition on themselves, that they have been warned that they would suffer if they remained South and the longer they continue to act against the wishes of the Govt the more wretched will they become.
>
> I should regret very much to see the Indians come into conflict with the force as you appear to apprehend, but should such be the case I trust you will recollect that over and over again you have been instructed to inform the Indians that the payments would not be made, neither would the Indians be fed at Ft. Walsh. This was done in anticipation of the Post being abandoned as agreed upon.
>
> Mr. McDonald has gone to Ft. Walsh to make the payments which I have, with great reluctance assented to he will also report to me the necessity of sending in supplies. If it is absolutely necessary to feed the Indians they will have to go to Swift Current Creek as supplies can then be sent from Winnipeg.[315]

Annuity moneys were distributed by McDonald at Fort Walsh over the course of some 20 days beginning on November 8, 1882.[316] He was not sympathetic to the Indians' plight:

---

313 Vankoughnet to Macdonald, October 25, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 405-9).

314 Had Fort Walsh closed in 1882 its closure would have coincided with the establishment of the provisional districts of Athabaska, Alberta, Saskatchewan, and Assiniboia. Assiniboia began at the Manitoba border and extended westwards along the United States border partially into what, in 1905, became the province of Alberta.

315 Dewdney to Irvine, October 27, 1882, NA, RG 10, vol. 3744, file 29506-2 (ICC Documents, pp. 307-9).

316 McDonald to Dewdney, November 11, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 313-15), and McDonald to Dewdney, November 21, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, p. 412).

> The Indians look very bad, I know they are not getting enough flour but I like to punish them a little. I will have to increase their rations, but not much.
>
> ...
>
> I say let us get the Indians through the winter the best way we can feeding them is the cheapest. The Railroad is progressing well and it would be a pity that anything should spring up which would be an excuse for the Indians to cause trouble now. There are some very ill disposed Indians here, year by year they have been getting less and a few months more will I think see very few on these hills.[317]

McDonald thought the Indians would leave the area on their own "in the spring or as soon as the Police go from here: there will be nothing to keep them and the fear of the Indians south and west will make them abandon Cypress Hills."[318]

Fort Walsh, Winter 1882–83

During the winter of 1882–83, with McIllree at Fort Calgary[319] and no Indian Department staff at Fort Walsh, Dewdney recommended that NWMP Inspector Frank Norman be delegated to issue food rations to the Indians.[320] White suggested that it would be preferable to have an officer of the Indian Department at Fort Walsh, however:

> Very considerable tact and discretion will have to be exercised in getting the Indians now there moved to their Reserves and complications with them may be avoided if a responsible officer with powers to act, beyond the mere issuing of rations, is in the vicinity.[321]

---

317 McDonald to Dewdney, November 11, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 410-11).

318 McDonald to Dewdney, November 11, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents pp. 313-15).

319 McIllree to Dewdney, December 2, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 316-28).

320 Dewdney to Superintendent General of Indian Affairs, December 6, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, p. 413).

321 White to recipient unknown, December 19, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 414-15).

If the Minister's decision was to leave Norman in charge of the Indians at Fort Walsh, White felt Norman should be entirely relieved of police duty.[322]

Faced with "sometimes over four thousand Indians in the immediate vicinity of Fort Walsh ... in a very deplorable and starving condition," Norman refused to further reduce the food allowance as instructed.[323] As it was, for every seven days he was issuing each Indian sufficient flour and meat to last just two days.[324] In January 1883, Norman had to borrow from the NWMP stores to meet the demand for rations.[325] By the beginning of February, supplies were running out entirely. Deep snow made it impossible to travel the 43 miles to the end of the CPR track to pick up the flour available there.[326] Nor could supplies be obtained from Fort Benton, which was 200 kilometres south of Fort Walsh.[327]

Return to Indian Head, Spring 1883

In his year-end report for 1883, Dewdney remarked that the "large sum" that had been expended in 1882 to assist Indians "to remove to their reserves" was effectively "thrown away" when so many returned to Fort Walsh for the winter of 1882–83. Fearing that "more serious complications of an international nature" would arise in 1883 from their "horse-thieving expeditions" into the United States, Dewdney resolved to try again:

---

322 White to recipient unknown, December 19, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 414-15).

323 Norman to Dewdney, December 27, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 329-30), and Galt to Superintendent General, December 28, 1882, NA, RG 10, vol. 3744, file 29506-3(ICC Documents, p. 418).

324 Norman to Dewdney, December 27, 1882, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 329-30).

325 Norman to Galt, January 3, 1883, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 419-20).

326 Norman to Galt, February 8, 1883, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, p. 332).

327 T.G. Baker & Co., Fort Benton, USA, to Galt, February 14, 1883, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, p. 331).

> I consequently decided to make another effort to disperse these bands and endeavor to get them to move to those sections of the Territories which they had formerly claimed as their own and had ceded under treaty to the Dominion.[328]

Dewdney attributed the Indians' reluctance to relocate to a romantic attachment to a bygone era:

> It is a matter of no wonder that such a strong stand should have been made against our repeated efforts to cause them to leave their old haunts, places associated with thoughts of freedom and plenty, whilst the buffalo roamed the Plains in countless numbers. Leaving these hills behind them dashed to the ground the last hope to which they had so strenuously and fondly clung, of once more being able to live by the chase ...[329]

For government officials in the spring of 1883, the priorities were preserving order in the Regina, Qu'Appelle, and Indian Head areas and trying to banish the remaining Indians from the Cypress Hills. Having wintered poorly at Fort Walsh or elsewhere, the bands of Piapot, Long Lodge, and Man Who Took the Coat had little choice but to return to Indian Head in the spring of 1883. The railway track had been laid, enabling these bands to be sent by train eastwards from Maple Creek,[330] but a derailment during this trip, in which some Assiniboine were injured, heightened their anxiety. On May 25, 1883, the Indian Commissioner in Winnipeg wrote to the Superintendent General in Ottawa to advise him how things were progressing:

> [G]reat difficulty has been experienced in inducing the Walsh Indians to go to their various Reserves, influence from many sources were strongly bearing upon those who were deciding to go north to change their minds, and not go. The Railway accident which happened to those who were on their way to Qu'Appelle did a great

---

328 Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1883* (Ottawa, 1884), 98-100, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 56, fn 100).

329 Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1883* (Ottawa, 1884), 98-100, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 56).

330 Sir Cecil E. Denny, *The Law Marches West*, ed. W.B. Cameron, with a foreword by A.C. Rutherford (Toronto: J.M. Dent and Sons, 1939), 173, 175. After stating that "the Crees and Assiniboine at the Cypress Hills and in the vicinity of [railway] construction at Maple Creek were most troublesome," he points out that many instances of horse stealing were "really the work of white desperadoes following in the wake of construction."

> deal towards upsetting their minds and it was with great persuasion that they were induced to go farther, nothing would encourage them to take the cars again, so cart had to be engaged to do the carrying of those unable to walk.[331]

Assistant Indian Commissioner Hayter Reed and Colonel Irvine visited the Indians in May. At the Assiniboine camp, about 15 miles from the rail line at Indian Head, Irvine urged Man Who Took the Coat to remain on his reserve, "which he promised to do."[332] In contrast, Piapot and Long Lodge had grievances that caused them and their followers to move off the reserve, the former stating "that he and his people could not endure the stench that emanated from the dead bodies of unburied Indians then lying on the ground."[333] Irvine wrote of this situation and his concern for law and order:

> These bodies had, in accordance with their usual custom in that respect, been placed in small trees which having been burned down by fire, caused the bodies to drop upon the ground where they remained. He also told me that he was going with his people to some place where they would be able to catch fish sufficient to live upon. I explained to him fully that the Government would not permit in the present settled state of the country, or armed parties of either whites or Indians moving to different parts of the Territories, such a [illegible] being contrary to law and that he had better carefully consider his movements.
>
> I returned here last night and leave today with fifty men and one gun for Qu'Appelle, and will in all probability meet the Indians en route.
>
> My object in going is to guard against their interfering with the settlers in that district [illegible] and I consider that the presence of the Police will have a beneficial effect and be reassuring to the settlers unaccustomed to the habits of Indians and who might probably view matters in a more serious light than the occasion requires and besides the presence of so large a number of Police might have a good effect on the Indians mind and be the means of inducing them to reconsider their movement and possibly of returning to their Reserve.[334]

---

331 Indian Commissioner to Superintendent General of Indian Affairs, May 25, 1883, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 333-35).

332 Irvine to White, NWMP, May 18, 1883, NA, RG 10, vol. 3745, file 29506-4, pt 1 (ICC Documents, pp. 342-48).

333 Irvine to White, NWMP, May 18, 1883, NA, RG 10, vol. 3745, file 29506-4, pt 1 (ICC Documents, pp. 342-48).

334 Irvine to White, NWMP, May 18, 1883, NA, RG 10, vol. 3745, file 29506-4, pt 1 (ICC Documents, pp. 342-48).

When the Assiniboine went to their Indian Head reserve the second time, there were "eighty-six in all," considerably fewer than had arrived the year before. McDonald explained that Man Who Took the Coat had returned with 80 of his followers and Long Lodge's head man named Little Mountain. "We have managed to put thirty-seven acres under crop for them," wrote McDonald on July 6, 1883.[335] Statistics in the department's *Annual Report* indicated that the crops included 22 acres of barley, 6.5 acres of potatoes, 5.5 acres of turnips, and 3 acres of garden vegetables. The yield was 200 bushels of barley and 60 bushels of potatoes.[336]

One month later, the office of the Indian Agent was moved from Qu'Appelle to Indian Head. At the end of August 1883, McDonald reported that, "since spring, Indians have been coming from the vicinity of Cypress Hills and going on their reserve." Piapot and his band were among those who had returned to their reserves.[337]

Government "Success," Fall 1883

By October 1883, Dewdney was satisfied that his "effort to disperse these bands and endeavor to get them to move to those sections of the Territories which they had formerly claimed as their own and had ceded under treaty to the Dominion" had been successful, and that the Assiniboine "placed on their reserve at Indian Head are now quite contented and doing well."[338] Dewdney's October 24, 1883, letter to Macdonald detailed the attitudes and ideas that had motivated him over the previous three years:

---

335 Agent McDonald to Superintendent General of Indian Affairs, July 6, 1883, Canada, *Annual Report for the Department of Indian Affairs for Year Ending 31st December 1883* (Ottawa, 1884), 73-75 (ICC Documents, pp. 356-57).

336 Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt II, p. 38).

337 Agent McDonald to Superintendent General of Indian Affairs, August 31, 1883, Canada, *Annual Report for the Department of Indian Affairs for Year Ending 31st December 1883* (Ottawa, 1884), 73-76 (ICC Documents, pp. 358-59).

338 Dewdney to Superintendent General of Indian Affairs, October 2, 1883, Canada, *Annual Report for the Department of Indian Affairs for Year Ending 31st December 1883* (Ottawa, 1884), 98-100 (ICC Documents, pp. 360-62).

Being aware of the importance attached by you of relieving that part of the country adjacent to the International Boundary line of those of our Indians who have for some years past looked upon it as their wintering ground, I have the honor to report that, during the past summer my efforts have in a great measure been framed in order to accomplish this end.

Need I assure you that not a little time was necessarily occupied in this endeavor, as with a pardonable jealousy the Indian clung to those haunts which were the scenes of his brightest days, feeling loath to leave a country where many of them had been nurtured and experienced the delights of the chase & [illegible] he might never again return. Moral suasion and it alone was the only means adopted by me in accomplishing what [illegible] in view and this with Indians means [illegible] and a constant repetition of grounds already gone over.

I feel happy in being able to report that out of the 300 or 400 lodges, representing over 3000 Indians, which frequented the country in question, at the time of writing but few remain – some 30 or 40 lodges – and these can be moved at any moment if considered advisable.

To give a succinct report of my doings in the matter, I would state, that last April I decided to send my Assistant Commission to meet these Indians at Cypress Hills, some 30 odd miles north of the line, and this gentleman, although they advanced all manner of reasons for not complying with his requests as regards quitting the locality, advised me that he felt confident ...

Among the difficulties and these not the least that had to be encountered, were the strenuous endeavors on the part of interested traders and others, who benefited by the presence of the Indians, to persuade them that the words of the Great Mother were not to their good, and even on the point of being prevailed upon to depart a [illegible] and successful attempt was made to retain them longer by advising them to await my arrival, as I was then about going through the country to visit the Blackfeet.

My interview with them showed that I endorsed the course taken by my Assistant and after expressing my views in a most marked manner which appeared to dispel much of the hope they entertained of being able to have matters changed to meet their views, the greater portion under Big Bear, Lucky Man and Piapot left for the north and east, the Saskatchewan and Qu'Appelle Districts respectfully, the parts in which they were supposed to be treated with and claimed as their own.

A hundred or more lodges of recalcitrants remained behind, but I felt assured that later on in the season these could be forced to act in accordance with my wishes and the Department make a large saving as regards transport supplies etc. which prediction has been fulfilled for on a return of Chief Lucky Man and some few lodges from the north I [illegible] ...[339]

---

339 Dewdney to Superintendent General of Indian Affairs, October 24, 1883, NA, RG 10, vol. 3744, file 29506-3 (ICC Documents, pp. 336-41).

From an official point of view at least, the situation had been resolved.

FAMINE, INDIAN HEAD, SPRING 1884

Overall, the government may have been satisfied with the outcome, but neglect, illness, and starvation continued to be the lot of the Assiniboine on the Indian Head reserve. In May 1884, a physician who visited the encampments of Piapot, Long Lodge, and Man Who Took the Coat reported that the scurvy he observed there in February persisted owing to the absence of fresh food and vegetables from their diet. He felt it was useless simply to supply ammunition because ducks and chickens were very scarce.[340]

Hayter Reed forwarded the physician's report to Macdonald, but rather than admit any failing on the part of the department, Reed too blamed the Indians for their misfortune:

> [N]o doubt the death rate is large but it must be borne in mind that the first seeds of their complaints were sown during the sojourning of the Indians in the Fort Walsh District, owing to immoral habits, and were it not for this fact the use of [unreadable] would not have such a hurtful effect.
>
> When the doctor speaks of starvation the same does not mean that the quantities issued were not sufficient but that the Indians were unable to eat the bacon.[341]

Reed's use of the word "sojourning" implied that the Assiniboine were temporary residents of the Cypress Hills. Nevertheless, he did order a small quantity of meat and potatoes to be supplied.[342]

The department's year-end statistics indicate that the Assiniboine planted 55.5 acres of land with the following crops in 1884: wheat, 6.5 acres; barley, 2 acres; potatoes, 35 acres; turnips, 8 acres; carrots, 2 acres; and onions, 22 acres.[343]

---

340 D.C. Edwards to Agent McDonald, May 13, 1884, NA, RG 10, vol. 3745, file 29506-4 (ICC Documents, pp. 349-51).

341 Hayter Reed, Indian Commissioner, to Superintendent General of Indian Affairs, May 20, 1884, NA, RG 10, vol. 3745, file 29506-4 (ICC Documents, pp. 352-53).

342 Hayter Reed, Indian Commissioner, to Superintendent General of Indian Affairs, May 20, 1884, NA, RG 10, vol. 3745, file 29506-4 (ICC Documents, pp. 352-53).

343 Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt II, p. 38).

BAND AMALGAMATION AND RESERVE SURVEY, 1885

Long Lodge died on Christmas Eve 1884, and Dewdney immediately proposed joining the two Assiniboine bands under Man Who Took the Coat.[344] In early March, McDonald convinced the followers of Long Lodge that this was a good idea,[345] and the amalgamation was formally approved by the department later that month.[346]

At about the same time, Dewdney instructed Nelson to survey the Indian Head reserves, as Nelson's report to Dewdney shows:

> In the winter you informed me of your intention to have the reserves at Indian Head surveyed before undertaking the survey of the more extensive reserves at BearHill and Whitefish Lake. [347]

Accordingly, on June 5, 1885, John Nelson's survey party travelled about 10 miles southeast of Indian Head to survey the reserve for the band of Man Who Took the Coat and his new Long Lodge adherents.[348] By that time, Piapot was no longer at Indian Head, having returned to the Qu'Appelle Valley.

Nelson discussed the boundaries of the reserve with Man Who Took the Coat and the Indian agent:

> I left Indian Head, accompanied by Colonel McDonald, Indian Agent, to consult Chief Jack in regard to the boundaries of his reserve. He said since talking with

---

344 Dewdney to Superintendent General of Indian Affairs, January 10, 1885, NA, RG 10, vol. 3704, file 17825 (ICC Documents, p. 363).

345 Agent McDonald to Indian Commissioner, March 4, 1885, NA, RG 10, vol. 3704, file 17825 (ICC Documents, pp. 365-67).

346 Dewdney to Superintendent General of Indian Affairs, March 9, 1885, NA, RG 10, vol. 3704, file 17825 (ICC Documents, p. 428), and author unknown to Dewdney, March 28, 1885, NA, RG 10, vol. 3704, file 17825 (ICC Documents, p. 429).

347 Nelson Report, December 5, 1885, in Canada, Parliament, *Sessional Papers*, 1886, No. 4, "Annual Report of the Department of Indian Affairs for the year ended 31st December 1885," cited in Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, pt II, p. 28).

348 Nelson to Dewdney, December 5, 1885, in Canada, Parliament, *Sessional Papers*, 1886, No. 4, "Annual Report of the Department of Indian Affairs for Year Ended 31st December 1885," 146-51 (ICC Documents, pp. 368-73); and federal Order in Council, May 17, 1889 (ICC Documents, pp. 374-75).

> Colonel McDonald in the spring, he had carefully examined the block of land set apart for the Assiniboine Indians, and would like to obtain that part of it which had been abandoned by Pie-pot, for he found both land and timber good, and preferred it to any farther west. Seeing no objection to this, it was decided between us that the tract which he desired should form part of the reserve for his band and that of the late Chief Long Lodge. The reserve was finally laid out nine miles from east to west by eight from north to south.[349]

The resulting 73.2 square mile (46,854 acre) area was confirmed as Assiniboine Indian Reserve (IR) 76 on May 17, 1889, by Order in Council 1151-1889.[350] Under the terms of Treaty 4, this tract represented land for 366 people; as at December 31, 1884, the department's Annual Report showed a total of 339 people, consisting of 251 in the band of Man Who Took the Coat and 88 with Long Lodge.[351] IR 76 was withdrawn from the operation of the *Dominion Lands Act* on June 12, 1893, by Order in Council 1694-1893.[352]

Existence of Cypress Hills Reserve Denied, 1909

About 20 years after the Assiniboine reserve near Indian Head was confirmed, the Deputy Minister of the Department of Interior received an inquiry from A.J. Haig Russell[353] of Toronto, Ontario. He wanted "a map showing the Assiniboine Reserve in the Cypress Hills." He seemed somewhat familiar with the property: "A survey of it was made by Allan P. Patrick, D.L.S. If there is any map published by your Department showing it would you kindly send me a copy and oblige."[354]

---

349 Nelson to Dewdney, December 5, 1885, in Canada, Parliament, *Sessional Papers*, 1886, No. 4, "Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1885," 146, cited in Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 57).

350 Federal Order in Council, May 17, 1889 (ICC Documents, pp. 374-75).

351 Jim Gallo, "Research Report on Carry the Kettle Claim to a Reserve in the Cypress Hills," revised November 1998 (ICC Exhibit 10B, p. 57).

352 Order in Council PC 1694-1893, June 12, 1893, NA, RG 2, Series 1 (ICC Documents, pp. 376-78).

353 No information was provided to the Commission regarding A.J. Haig Russell or what motivated his inquiry into a "reserve" in the Cypress Hills.

354 A.J.. Haig Russell to Deputy Minister of the Interior, October 10, 1909, NA, RG 10, vol. 4001, file 209590-1 (ICC Documents, p. 379).

Indian Affairs' response was to deny the existence of the former Assiniboine Reserve:

> With reference to your letter of the 10th instant, I have to state that this Department has no Indian Reserve in the Cypress Hills.
>
> What is now known as the Assiniboine Reserve is a few miles south west of the town of Wolseley, Sask. A plan of this reserve can be sent to you if it is the one desired.[355]

Russell pursued the matter further, asking again for a map of "the old Assiniboine Reserve":

> I am aware that there is now no Indian Reserve in the Cypress Hills and if you look at my letter of the 10th Inst. I think you will find I speak of the old reserve which I know from being on the ground at the time did exist and was surveyed, I think, by Allan Poyntz Patrick, DLS, some time in the early eightys. I am anxious for the purpose of identifying certain points on the ground to get the place of the southern and western boundarys [sic].[356]

J.D. McLean, Secretary, Department of Indian Affairs, would not admit to the existence of such a survey. He stated that the department did not have any such plans or field notes. Since there was no confirmation of the reserve, it was not under the jurisdiction of Indian Affairs. McLean wrote:

> With reference to your letter of the 23rd inst. I have to state that if Mr. A. Patrick, D.L.S. surveyed an Indian Reserve in the Cypress Hills in the early eighties it was not confirmed as such and therefore did not come under this Department, so that there are not now any plans or field notes of record here. It would become part of the Dominion Lands and the survey consequently would not be recognized by that Department.[357]

The question of whether a reserve was created for the Assiniboine in the Cypress Hills will be discussed in the next part of this report. What constitutes a "reserve" and, in particular, what

---

355 S. Stewart, Assistant Secretary, Indian Affairs, to A.J. Haig Russell, October 20, 1909, NA, RG 10, vol. 4001, file 209590-1 (ICC Documents, p. 380).

356 A.J.. Haig Russell to Secretary, Indian Affairs, October 23, 1909 (ICC Documents, p. 381).

357 J.D. McLean, Secretary, Indian Affairs, to A.J. Haig Russell, October 28, 1909, NA, RG 10, vol. 4001, file 208590-1 (ICC Documents, p. 382).

circumstances necessitate a "surrender" of a reserve are essentially the questions before this Commission. Our analysis of these issues follows in the next sections of this report.

PART III

ISSUES

Counsel for the First Nation and for Canada agreed that the Commission should address the following issues in this inquiry:

1. **Was a reserve set apart at the Cypress Hills for the people of Chiefs Man Who Took the Coat and Long Lodge? More specifically,**
   - (a) **was a reserve created pursuant to the terms of Treaty 4;**
   - (b) **was a reserve created pursuant to the provisions of the *Indian Act*; or**
   - (c) **was a *de facto* reserve created?**

2. **If a reserve was created, was there a valid surrender or extinguishment of the Band's interest in the reserve?**

3. **If there was a valid surrender, did the Crown breach any treaty, fiduciary, or other lawful obligation owed by Canada to the people of Chiefs Man Who Took the Coat and Long Lodge?**

Part IV of this report sets out our analysis and findings on the issues before the Commission in this inquiry.

PART IV

ANALYSIS

ISSUE 1 CREATION OF CYPRESS HILLS RESERVE

Was a reserve set apart at the Cypress Hills for the people of Chiefs Man Who Took the Coat and Long Lodge? More specifically,

(a) was a reserve created pursuant to the terms of Treaty 4;
(b) was a reserve created pursuant to the provisions of the *Indian Act*; or,
(c) was a *de facto* reserve created?

Issue 1(a): Was a Reserve Created Pursuant to the Terms of Treaty 4?

Treaty 4 was first executed at the Qu'Appelle Lakes on September 15, 1874, and its reserve clause describes the process for establishing Indian reserves and the nature of the Crown's obligation:

> And Her Majesty the Queen hereby agrees, through the said Commissioners, to assign reserves for said Indians, such reserves to be selected by officers of Her Majesty's Government of the Dominion of Canada appointed for that purpose, after conference with each band of Indians, and to be of sufficient area to allow one square mile for each family of five, or in that proportion for larger or smaller families.[358]

In 1877, the Assiniboine bands represented by Chiefs Man Who Took the Coat and Long Lodge adhered to Treaty 4, which incorporated, by reference, the provisions regarding the creation of reserves in the treaty by including, within the text of the adhesion, the following:

> We, members of the Assiniboine tribe of Indians, having had communication of the treaty hereto annexed, made on the 15th day of September, one thousand eight hundred and seventy four ... in consideration of the provisions of the treaty being extended to us ... And we hereby agree to accept the several provisions and the payment in the following manner, viz: That those who have not already received payment receive this year the sums of twelve dollars for the year 1876 ... and five dollars for the year 1877 ... and five dollars per annum for every subsequent year ...[359]

---

358 *Treaty No. 4 between Her Majesty the Queen and the Cree and Saulteaux Tribes of Indians at Qu'Appelle and Fort Ellice* (Ottawa: Queen's Printer, 1966) (ICC Documents, p. 29).

359 *Adhesion to Treaty No. 4 between the Assiniboine Band of Indians and Her Majesty the Queen at Fort Walsh* (Ottawa: Queen's Printer, 1966) (ICC Documents, pp. 27-28).

When they adhered to the treaty, the Assiniboine bands made it known that their territory included the Cypress Hills:

> The country claimed by the Assiniboine, admitted in treaty this year by me [Walsh] as the country of their forefathers, extends from the west end of Cypress Mountain to Wood Mountain on the east, north to the South Saskatchewan and south to Milk River.[360]

The terms of Treaty 4, then, required the Crown to set aside a reserve for the people of Chiefs Man Who Took the Coat and Long Lodge. Although Treaty 4 outlines a process for the establishment of Indian reserves, that process allows for considerable flexibility as to timing; the treaty is therefore not helpful in deciding the point in time when, in fact, a reserve has been created. In a number of other cases, the Commission has wrestled with the difficult factual question of whether a reserve has been created or not. As in those inquiries, we find it necessary to consider certain well-defined principles of law relating to treaty interpretation and to apply those fundamental principles to the reserve creation clause of Treaty 4 and to the circumstances of this case.

Principles of Treaty Interpretation

The Commission's deliberation in this and other inquiries has been informed most fundamentally by the hallmark principles of treaty interpretation recently summarized in *R. v. Badger*

> At the outset, it may be helpful to once again set out some of the applicable principles of treaty interpretation. First, it must be remembered that a treaty represents an exchange of solemn promises between the Crown and the various Indian nations. It is an agreement whose nature is sacred. ... Second, the honour of the Crown is always at stake in its dealings with Indian people. Interpretations of treaties and statutory provisions which have an impact upon treaty or Aboriginal rights must be approached in a manner which maintains the integrity of the Crown. It is always assumed that the Crown intends to fulfil its promises. No appearance of "sharp dealing" will be sanctioned. ... Third, any ambiguities or doubtful expressions in the wording of the treaty or document must be resolved in favour of the Indians. A corollary to this principle is that any limitations which restrict the rights of Indians

---

[360] Report, J.M. Walsh to Minister of the Interior, E.A. Meredith, October 28, 1877, Canada, Parliament, *Sessional Papers*, 1879, No. 10, xxxi-xxiv (ICC Documents pp. 39-42).

> under treaties must be narrowly construed. ... Fourth, the onus of proving that a treaty or aboriginal right has been extinguished lies upon the Crown. There must be "strict proof of the fact of extinguishment" and evidence of a clear and plain intention on the part of the government to extinguish treaty rights.[361]

The Supreme Court of Canada most recently tested and affirmed the second principle stated in *Badger* "that the honour of the Crown is always at stake in its dealings with aboriginal people" in *R. v. Marshall*.[362] This principle, the Court noted, dates back to its decision in *Re Indian Claims*, where it stated

> that the terms and conditions expressed in those instruments [the treaties] as to be performed by or on behalf of the Crown, have always been regarded as involving a trust graciously assumed by the Crown to the fulfillment of which with the Indians the faith and honour of the Crown is pledged, and which trust has always been most faithfully fulfilled as a treaty obligation of the Crown.[363]

The Commission has previously relied upon these principles of interpretation in the context of three treaty land entitlement inquiries under Treaties 4 and 6.[364] Counsel to the First Nation and Canada have referred us to the Commission's findings in those three inquiries: Kahkewistahaw First Nation, Lucky Man Cree First Nation, and Gamblers First Nation. These cases provide a useful starting point for our analysis.

In the Commission's *Inquiry into the Treaty Land Entitlement Claim of the Kahkewistahaw First Nation*, the Commission stated:

---

361 *R. v. Badger*, [1996] 1 SCR 771 at 793-94.

362 *R. v. Marshall*, [1999] 3 SCR 456.

363 *R. v. Marshall*, [1999] 3 SCR 456 at 497, citing with approval *Re Indian Claims* (1895), 25 SCR 434 at 511-12.

364 As we stated in our report of the Lucky Man Cree treaty land entitlement, "[i]t is just this sort of consensus or meeting of the minds that the Commission referred to in its report dealing with the Kahkewistahaw Band of Treaty 4, and we believe that this conclusion is equally applicable to bands under Treaty 6. " ICC, *Inquiry into the Treaty Land Entitlement Claim of the Lucky Man Cree Nation* (Ottawa, March 1997), 73, reported (1998) 6 ICCP 109 at 162.

> [A] band's *entitlement* to reserve land arises upon the band signing or adhering to treaty. However, the *quantification* and *location* of the band's entitlement are not triggered until certain procedures described in the treaty are carried out. Under Treaty 4, *"such reserves [are] to be selected by* officers of Her Majesty's Government of the Dominion of Canada appointed for that purpose,*after conference with each band of the Indians*.[365]

The Commission went on to describe the purpose of the "conference" with the band:

> In our view, the purpose of the "conference" with the band was to ensure that the land to be set aside as reserve met with the approval of the chief and headman and that it was suitable for its intended purpose ...[366]

The Commission observed in that report that the process to create a reserve required a decision by *both* Canada and the First Nation:

> It was only when *agreement* or *consensus* was reached between the parties to the treaty – by Canada agreeing to survey the land selected by the band, and by the band accepting the survey as properly defining the desired reserve – that the land as surveyed could be said to constitute a reserve for the purposes of the treaty.[367]

In the Commission's report on the treaty land entitlement claim of the Lucky Man Cree Nation, the Commission stated that the act of consensus will*follow* the survey:

> It was only *following* the survey, when the band indicated its acceptance of the surveyed area as its reserve – either expressly (by saying so) or implicitly (by living on or using the reserve for its benefit) – that a true consensus could have been said to exist.[368]

---

365 ICC, *Inquiry into the Treaty Land Entitlement Claim of the Kahkewistahaw First Nation* (Ottawa, November 1996), 67, reported (1998) 6 ICCP 21.

366 ICC, *Inquiry into the Treaty Land Entitlement Claim of the Kahkewistahaw First Nation* (Ottawa, November 1996), 67-68, reported (1998) 6 ICCP 21.

367 ICC, *Inquiry into the Treaty Land Entitlement Claim of the Kahkewistahaw First Nation* (Ottawa, November 1996), 69, reported (1998) 6 ICCP 21.

368 ICC, *Inquiry into the Treaty Land Entitlement Claim of the Lucky Man Cree Nation* (Ottawa, March 1997), 74, reported (1998) 6 ICCP 109.

The Commission went on to state:

> Arguably the logical extension of this requirement for consensus is that, just as it would have been open to a band to reject for its own reasons a reserve site selected by Canada, it would have been equally open to Canada to reject sites requested by the band if there were valid reasons for doing so. Canada's discretion in this regard would presumably have to be exercised reasonably, however.[369]

Finally, in the report on Gamblers First Nation TLE inquiry, the Commission addressed the requirement of the "conference" found in Treaty 4 and the need for consensus. The Commission said the following:

> To summarize, the Commission considers the "conference" requirement of Treaty 4 to be more than a formality. It is included to ensure that the land meets with the approval of band leaders and that it will be suitable for its intended purposes. Once Canada agrees to the band's selection and completes the survey, the band can expressly approve or disapprove of the land set apart; alternatively, it can signal its approval by continuing to reside on and use the reserve for the collective benefit of its members, or its disapproval by refusing to live on and use the reserve as surveyed.
>
> ...
>
> Neither party in this case has persuaded the Commission that it should take a different approach from the one it took in the Kahkewistahaw and Lucky Man inquiries. We still believe that the treaty makers intended the process of reserve selection to proceed by way of consensus and that, as a result, neither Canada nor the Band could unilaterally determine the location of the reserve.[370]

Therefore, as we have previously stated, in our view the Crown's obligation under Treaty 4 was to establish a reserve for the First Nation after appropriate consultation with the band to ensure that the reserved lands were suitable for their intended purpose. Following the process of consultation, the lands selected would generally be surveyed and Canada and the band would confirm their acceptance of that survey, either formally or by way of conduct. Thus, the requisite elements in the setting aside of a reserve include:

---

369 ICC, *Inquiry into the Treaty Land Entitlement Claim of the Lucky Man Cree Nation* (Ottawa, March 1997), 76-77, reported (1998) 6 ICCP 109.

370 ICC, *Inquiry into the Treaty Land Entitlement Claim of the Gamblers First Nation* (Ottawa, October 1998), 65, 67, reported (1999) 11 ICCP 3.

- consultation and selection;
- survey; and
- acceptance.

We will now consider each of these elements in the circumstances of this case.

Consultation and Selection

The evidence is uncontradicted that, within two years of adhering to Treaty 4, members of the Assiniboine Band of Man Who Took the Coat communicated their desire to settle down and select a reserve. Referring to a conference held at Fort Walsh on June 26, 1879, Commissioner Dewdney stated:

> I told them the Government would send them instructors who would show them how to cultivate the soil. I impressed upon them that the Government expected they should work the same as the white man did. I told them that I had brought two farmers with me who would at once commence to break up the soil and raise crops to furnish them with seed and food while at work on their own Reservations.
>
> I told them that if they would only make up their minds to settle down, I was sure that in two or three years they would be independent, and have plenty to live on, without begging from the Government ...
>
> All the Indians expressed great satisfaction at which I told them and two of the principal Chiefs, "The Man that stole the coat" an Assiniboine and "little Child" a Cree, *at once expressed a desire to select their land and settle down.*[371]

In a subsequent letter sent by Dewdney dated January 2, 1880, Man Who Took the Coat identified the lands he was selecting:

> The Assiniboine have not, as yet, settled on their reservations. One band whose Chief's name is "The Man-that-stole-the-coat", expressed a wish last spring to settle, and picked out land at the west of Cypress Mountain for his reservation.[372]

---

[371] Edgar Dewdney, Commissioner of Indian Affairs, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, in Canada, Parliament, *Sessional Papers*, 1880, No. 4, "Annual Report of the Department of the Interior for the Year Ended 30th June 1879" (ICC Documents, pp. 64-69). Emphasis added.

[372] Edgar Dewdney, Commissioner of Indian Affairs, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, Parliament, *Sessional Papers*, 1880, No. 4, "Annual Report of the Department of the Interior for the Year Ended 30th June 1879" (ICC Documents, p. 56).

The evidence is also incontrovertible that the Assiniboine people were seeking a reserve in the Cypress Mountains. Dewdney reported that Man Who Took the Coat had identified the land he and his followers wanted as their reserve when he visited the site on October 26, 1879:

> On the 26th I left my party, and, in company with Lavallee visited the locality that the Assiniboine Chief had notified me in the spring that he would like for his reservations. It is situated on the north-west end of the Cypress Mountains, and is well located for farming, provided early summer frosts are not prevalent.[373]

The words of Chief Man Who Took the Coat were echoed by his descendants when the Commission twice visited the people of the Carry the Kettle First Nation and heard their oral history. The first of two visits took place in May 1997 and coincided with the First Nation's annual pilgrimage to the burial site of the Cypress Hills Massacre. Speaking through an interpreter, Elder Kaye Thompson spoke of her people's spiritual connection to the territory of the Cypress Hills:

> The reserve land chosen for our people through our Chief, The Man Who Took the Coat, was endowed with such significant qualities, echoing the sacred relationship pertinent to all of existence. To our people this area was their most sacred land. Our blessed homeland blossomed with sustenance, offering harmony, with such vitality, conceiving ceremonial grandeur, forever perpetuating life.[374]

It is not surprising that "the Assiniboine Chiefs *selected* the "Head of the Mountain" in the western section of the Cypress Hills as the site of their reserve,"[375] given the history (both written and oral) that substantiates their occupation of the area. The Commission was struck by the extent to which the Assiniboine people had relied upon the Cypress Hills since time immemorial as a place of sanctuary during the winter months. Indeed, their economic, cultural, and spiritual connection to the Cypress Hills is not challenged by Canada.

---

373 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent of Indian Affairs, January 2, 1880, Canada, Parliament, *Sessional Papers*, 1880, No. 4, "Annual Report of the Department of the Interior for the Year Ended 30th June 1879" (ICC Documents, p. 54).

374 ICC Transcript, May 30 1997, p. 21 (Kaye Thompson).

375 Revised Submissions on Behalf of the Government of Canada, March 1, 1999, p. 4.

The Survey

In the fall of 1879, Commissioner Dewdney instructed surveyor A.P. Patrick to survey a reserve for the Assiniboine in the Cypress Hills, but owing to inclement weather, Patrick was unable to complete his work until the following year. By January 29, 1880, Dewdney wrote to Surveyor General Lindsay Russell in Ottawa to report on Patrick's progress: "Mr. Patrick is now at Fort Walsh, and when able to work will complete a Reserve for the Assiniboine and one for the Cree ..."[376] It was not until June 1881 that Patrick forwarded his survey to Dewdney in Ottawa. In its submissions to the Commission, Canada took issue with A.P. Patrick's survey on two grounds. First, Canada argues that Commissioner Dewdney lacked the requisite authority to conduct and approve of a survey. Rather, the conduct and approval of the surveys were vested with the Surveyor General and the Dominion Lands Branch. Second, A.P. Patrick did not perform a "completed survey," as required by the procedure of the time. The Commission rejects both of Canada's arguments for the following reasons.

Dewdney's Authority

The Commission regards Canada's argument that Commissioner Dewdney lacked the authority to conduct and approve a survey as specious. Edgar Dewdney, as the Indian Commissioner for the North-West, was one of the senior representatives of the Government of Canada in the west at this time, charged with responsibility to carry out the requirements of the treaty covenants, and in this capacity subject only to the instructions of the Minister of the Interior. It is absurd to contend – some 120 years after the fact – that Indian Commissioner Dewdney lacked the authority to instruct and guide the very surveys that were then being undertaken across the prairies under his direction. It is acknowledged that the scope of Commissioner Dewdney's authority was subject to some discussion, but the Commission finds nothing in the subsequent actions of the Crown, in this case or elsewhere, to suggest that Dewdney's authority to instruct and approve surveys was repudiated at any time. In any event, the fundamental question, as we shall see, is whether the survey plans were accepted by Canada following their completion.

---

376 Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998, (ICC Exhibit 11, p. 26).

It is clear that the surveyor responsible for surveying the Assiniboine reserve, A.P. Patrick, received his instructions from Dewdney and proceeded on this basis. In his report of the survey of the Assiniboine reserve, A.P. Patrick stated:

> I had received your instructions on the 17th November, 1879, to define the limits of the Assiniboine ... Reserve, and had made several attempts to carry them into execution; but owing to the severity of the winter, I was able to make but very little progress ... I have to report that this Reservation comprises an area of about 340 square miles. It extends along the northern slope of the Cypress Hills. The direction of which is east and west, a distance of 11 miles having a depth of two miles on the summit platform and stretching away for 31 miles out on the prairie land ridge. The Indian farm is on the highest point of the range 4,000 feet above sea level and about two miles from the brow of the hills. On my arrival I met the Chiefs of the Band, who urged upon me their desire that the lines should be run so as to include the whole of the timbered land.
>
> After much persuasion, they consented that the course of the lines should be run as I provided north and south and east and west; my object in view being that the lines should in their direction accord with their general system adopted in government surveys; and further by this partition, a fair division of the timbered lands would be made.
>
> I carried out my survey accordingly and on my leaving them the Chiefs expressed themselves very well satisfied with the result ...'[377]

Clearly, the oral evidence of the First Nation is that the Crown asked it to select a reserve and, once communicated, the Crown undertook a survey. In her oral testimony, Elder Kaye Thompson described the reserve in the following terms:

> The Man Who Took the Coat requested his reserve be surveyed at the head of the mountain, and he was given his reserve. The reserve was known as the "Assiniboine Reservation". We did not sell this land.[378]

Elder Andrew Rider offered this description:

---

377 [A.P. Patrick] to Edgar Dewdney, Indian Commissioner, North-West Territories, December 16, 1880, (ICC Documents, pp. 70-75).

378 ICC Transcripts, May 30, 1997, p. 30 (Kaye Thompson).

> We are told by our forefathers that the Queen asked us to select a reserve in our traditional homeland, and the signing of the treaty this is what our leaders have done after consulting with our people our traditional way ... When we talk about Cypress Hills, we are talking about a reserve west of here, and the reserve that was chosen by the people ...[379]

Completed Survey

We now consider Canada's second challenge to Patrick's survey – namely, that it was not a "completed survey" by the standards of the day (as outlined in *Manual Shewing the System of Survey*).[380] Although the documentary record is admittedly lacking, the Commission believes that Patrick did complete a survey, which was submitted to Ottawa for review. We have no reason to believe that Patrick's survey was defective or wanting in specificity. We therefore reject Canada's argument.

Canada points out that a copy of survey has never actually been found. Counsel argues that the only document that has been found, Patrick's field book, does not contain the information necessary to plot a survey which conformed to the survey requirements of the day. It is Canada's submission that there is no greater evidence of this deficiency than the January 18, 1999, memorandum of Samuel Doyle of the Manitoba and Canada Land Surveyor's Commission to Mr Gallo, wherein Mr Doyle concludes that "the data necessary to plot the survey is not shown ... due to the deficiencies of the subject field notes ... I am unable to plot the surveyed boundaries with any degree of certainty."[381]

The First Nation refutes Canada's submission as overly technical and submits that, if there is an issue as to the form of survey, the onus of proving that the survey was in some way deficient should be borne by Canada. Nonetheless, the First Nation points to the record of the day in which Patrick's survey was received in Ottawa in June 1881 and then forwarded by the Deputy

---

379 ICC Transcripts, May 30, 1997, p. 17 (Andrew Rider).

380 *Manual Shewing the System of Survey Adopted for the Public Land of Canada in Manitoba and the North-West Territories, with Instructions to Surveyors, Illustrated by Diagrams* (1871) and the *General Instructions for the Survey of Indian Reserves, Department of Indian Affairs 1883 Circular*, Revised Submissions on Behalf of the Government of Canada, March 1, 1999, Appendix A.

381 Revised Submissions on Behalf of the Government of Canada, March 1, 1999, p. 9, and Appendix A.

Superintendent General of Indian Affairs, Vankoughnet, to Dewdney for approval. There is no suggestion on record that Vankoughnet found the materials in any way deficient.

In our view, the evidence before us demonstrates that Patrick did in fact survey a reserve for the Assiniboine in the Cypress Hills. The submission of Canada that this survey was technically deficient by the standard of the day is, however, not borne out by the facts. A review of the 1871 *Manual* reveals a system of survey adopted to set aside township blocks, and it has not been shown that this *Manual* was intended to define the specific requirements for the survey of Indian reserves. Daniel Babiuk, in his "Report Regarding the Claim of Carrythe Kettle First Nation," explains the importance of specific mechanics to mark out Indian reserve boundaries:

> The manual deals with the surveying of base lines, meridians, township blocks and the subdivision of township blocks. There is absolutely no indication of how monuments on Indian Reserve boundaries should be marked. Traditionally they were marked I.R.; furthermore, not one of the diagrams indicated an Indian Reserve. The absence of any reference to an Indian Reserve ... is very conspicuous.[382]

We do not agree that the *Manual* established a standard procedure for the marking the boundaries of an Indian reserve and, in any event, it is ridiculous to attempt to measure a survey plan, which Canada itself cannot produce, against such a manual. We also reject the use of the "General Instructions (1883)" circular as a basis by which we should now compare Patrick's field book for the simple reason that this circular is not contemporaneous to Patrick's work, and Canada has not drawn our attention to, or put into evidence, any guideline that may have been available to Patrick when he undertook his survey. The documentary record establishes that Patrick completed a survey of a reserve in the Cypress Hills in mid-summer 1880 and forwarded his plan to Ottawa for approval. Two other survey plans were forwarded at that same time, and it is informative that neither of those plans were rejected on the basis that they did not conform to the*Manual* or the "General Instructions (1883)," or indeed for any other reason. In short, we have no reason to believe that Patrick's survey was not proper by the standards of the day.

---

382 Daniel Babiuk, "A Report Regarding the Claim of Carry the Kettle First Nation," March 5, 1999 (ICC Exhibit 17, p. 3).

There is, however, the requirement that, *following* the act of selection and the act of survey, both the First Nation and Canada *accept* the survey of the land selected by the band.

Acceptance of the Survey

The key factual question before the Commission was whether Canada and the First Nation "accepted" the Patrick survey, either through a process of formal confirmation or by their conduct.

In the case of Carry the Kettle First Nation, the evidence is uncontradicted that the Band accepted the land surveyed by Patrick as its reserve. As evidence that the Assiniboine occupied and used the land surveyed by A.P. Patrick – thereby demonstrating their acceptance of this land as a reserve – the First Nation lists the following:

- Reports of the Assiniboine fishing on the "reserve";
- Report of surgeon, George Kennedy, after inquiring into sickness among the Assiniboine, in December 1880:

  > ... October and November were marked by the prevalence of measles on the reserve on "the Head of the Mountain ..."[383]

- The Assiniboine were paid treaty at the "Assiniboine Reserve" in 1880;
- In Dewdney's 1880 report, he suggests that there were abandoned houses on the reserve "which will be made use of by the Indian Instructor sent there as well as by the Indians themselves";[384]
- From reports of farming operations, the Assiniboine were farming on the lands surveyed by Patrick in 1880;
- It was not until the spring of 1882 that the Assiniboine people left for Indian Head.[385]

---

383 Jayme Benson, "Report on the Assiniboine Claim to the Cypress Hills Reserve," November 27, 1998 (ICC Exhibit 11, Supporting Documents, tab 33).

384 Edgar Dewdney, Indian Commissioner, North-West Territories, to Superintendent General of Indian Affairs, January 2, 1880, Canada, Parliament, *Sessional Papers*, 1880, No. 4, "Annual Report of the Department of the Interior for the Year Ended 30th June 1879" (ICC Documents, p. 54).

385 Submissions on Behalf of Carry the Kettle First Nation, February 5, 1999, pp. 48-52.

It is the First Nations' submission that the above factors, along with the fact that reports do not clearly show the Assiniboine people to be anywhere *other than* the area surveyed by Patrick, should lead the Commission to conclude that the Band did in fact make use of and occupy the land surveyed for it as a reserve. Taken together, this evidence of use and occupation should lead the Commission to find that the Man Who Took the Coat and his followers *accepted* the surveyed land as their reserve.

Furthermore, the First Nation submits that Canada did administer the area as a reserve as evidenced by the following:

- Commissioner Dewdney reported to the Prime Minister and Parliament that the area was a reserve.
- A farm instructor was dispatched to the area by Commissioner Dewdney.
- An Indian agent was assigned to the area.
- Treaty payments were made at the "reserve."[386]

In our view, the evidence before us demonstrates that the First Nation accepted the land surveyed by Patrick for the Assiniboine as its reserve. More problematic, however, is the question whether Canada "accepted" the Patrick survey.

The key facts seem to us to be the following:

a Commissioner Dewdney instructed Patrick to survey an Assiniboine reserve in the Cypress Hills on November 17, 1879.

b Patrick began his survey in the winter of 1879, but did not complete it until the summer of 1880.

c Patrick submitted his survey (along with two others) to Ottawa in June 1881, where it was received by the Deputy Superintendent General of Indian Affairs, Vankoughnet.

d Vankoughnet then forwarded the plans on June 23, 1881, to Commissioner Dewdney, requesting approval or "certification."

---

386 Submissions on Behalf of Carry the Kettle First Nation, February 5, 1999, pp. 48-52.

e The plans were received by Dewdney's office on July 4, 1881.

f There appears to be no copy of Patrick's plan of survey in existence today.

g By November 1880, Commissioner Dewdney had recommended to Superintendent General of Indian Affairs Macdonald that the Assiniboine be relocated out of the Cypress Hills.

h The Carry the Kettle people had taken up occupation of the lands surveyed by Patrick at least since Patrick began preparations of the survey.

i Over the course of the summer and fall of 1881, the government advised the Assiniboine of its intention to close Fort Walsh and to relocate the Assiniboine from the Cypress Hills.

j In the spring of 1882, the government attempted physically to remove the Assiniboine from the Cypress Hills and settle them at Indian Head, Saskatchewan. Reluctant to stay, the Assiniboine returned to the Cypress Hills, where they remained until the spring of 1883. At that time the government eventually succeeded in relocating the community to proposed reserves at Indian Head.

k The situation at Fort Walsh and Cypress Hills during the winter of 1881–82 was as tragic as any in Canadian history. Approximately 2000 Indian people, including the Carry the Kettle band, were huddled at Fort Walsh facing starvation, deprivation, and uncertainty as to their future. The NWMP and the Department of Indian Affairs had been instructed to persuade, or, alternatively, coerce the various bands to disperse from Fort Walsh. In response to very specific instructions, the rations upon which the people had come to rely forsurvival were being meted out and in some cases withheld in an attempt to force people to leave.

The First Nation submits that the survey was accepted by the appropriate government authorities, as evidenced by the department's *administration* of the lands as an Indian reserve. The Commission has concluded, somewhat reluctantly, that the Government of Canada did not accept Patrick's survey and, therefore, that the lands set aside as a reserve in the plan were not accepted by Canada pursuant to the terms of Treaty 4. As we have noted previously, it is our view that the requisite elements to the setting aside of reserves under Treaty 4 included consultation and selection, followed by survey, followed by ultimate acceptance by both the First Nation and Canada. The acceptance of the survey could be effected in a formal manner or could be found in the conduct of either party. In this case, we have concluded that Canada did not accept Patrick's survey when it was submitted to Ottawa in June 1881. It is certainly clear that Dewdney dispatched Patrick to survey a reserve for the Assiniboine in the Cypress Hills. It is also incontrovertible that the Assiniboine did

select land in the Cypress Hills and that Patrick did in fact survey the land selected. Nor is it possible to doubt that the land surveyed by Patrick was accepted by the Band. However, it is extremely unlikely that Dewdney would have accepted Patrick's survey when it reached his office in July 1881, since Canada, in consultation with Dewdney and others, had made a decision to relocate the Assiniboine from the Cypress Hills well before July 1881. In fact, that decision appears to have been made by November 1880 and communicated to the Assiniboine in the summer of 1881. Although there is no documentary record substantiating the rejection of Patrick's survey, all of Dewdney's actions and correspondence evidence a decision having been made to relocate the Assiniboine from the Cypress Hills. We therefore conclude that Canada did not accept Patrick's survey of the area selected by the Assiniboine in the Cypress Hills as a reserve pursuant to the requirements under Treaty 4. That being said, and as we will explain further in this report, whether Canada's decision to relocate the Assiniboine from the Cypress Hills was "fair" at the time and whether it is "fair" today is a matter we feel we must address within our "supplementary mandate" at the conclusion of this report.

Canada has, however, put forward several arguments that the Commission rejects and that we wish to briefly comment upon.

First, Canada asserts that the Assiniboine had "abandoned" the Cypress Hills before Patrick submitted his survey plan to the Government of Canada.[387] This is inaccurate. Patrick's survey plan was submitted to Ottawa in June 1881, and the Assiniboine were still living in the area when the government began its relocation efforts in the spring of 1882.

Second, Canada argues that the only appropriate evidence for "acceptance" of the Band's selection of land as reserve is the formal approval of the survey by the duly authorized officers of the Interior Department or the Department of Indian Affairs. No such approval of A.P. Patrick's survey of 1880 can be found on record, and therefore Canada argues that to state "a survey in and of itself gives full effect to the reserve clause of Treaty 4 is both erroneous and unsupported by the historical record."[388] We do not agree with Canada. In our view, the government could, by its

---

387 Revised Submission on Behalf of the Government of Canada, March 1, 1999, p. 11.

388 Revised Submission on Behalf of the Government of Canada, March 1, 1999, p. 16.

conduct, be said to have "accepted" an allocation of reserve land, even though the survey was not formally approved. In the circumstances before the Commission, however, we conclude from all the evidence that the survey plan was rejected by Canada because it was quite inconsistent with the policy that had been adopted by the highest level of government of the day.

Finally, Canada submits that the absence of an order in council confirming the survey is further proof of Canada's lack of acceptance of the reserve. The exercise of the royal prerogative being an "outward public manifestation of the will of the Crown," Canada argues that reserves are "set apart" in law by the existence of the royal prerogative, which is evidenced by one of the following instruments:

- a proclamation, writ, letters patent, grant of other document under the Great Seal;
- an order in council; or
- a warrant, commission, order, or instruction under the Sign Manual.[389]

Canada refers to the Commission's finding in the Kahkewistahaw TLE report that an order in council can evidence the Crown's agreement of a reserve as surveyed. Although not disagreeing that an order in council can evidence the Crown's acceptance, the Commission did not find that a federal order in council is a necessary precondition to creating a reserve. At page 78 of the Kahkewistahaw TLE report the Commission stated:

> The subsequent conduct of the parties confirms that they agreed to treat the 1881 survey as the First Nation's reserve under Treaty 4. Although the Commission does not make any findings on whether a federal order in council is necessary before an Indian reserve can be created, the fact that the survey plan submitted by Nelson was accepted by Canada by means of an order in council provides evidence that the Crown agreed to the reserve surveyed by Nelson in 1881 ...[390]

---

389 Revised Submission on Behalf of the Government of Canada, March 1, 1999, p. 18

390 ICC, *Inquiry into the Treaty Land Entitlement Claim of the Kahkewistahaw First Nation* (Ottawa, November 1996), 78, reported (1998) 6 ICCP 21.

The parties agree that there is no evidence of an order in council confirming the setting aside of a reserve in Cypress Hills. In the Commission's view, an order in council is not a necessary prerequisite in any event.

In the final analysis, the Commission does agree that reserves were sometimes rejected, as unsuitable by Canada, *after* they had been surveyed but *before* they were formally "set apart" for a band.[391] Canada cites the following passage from the Commission's Lucky Man TLE report in support:

> Arguably, the logical extension of this requirement for consensus is that, just as it would have been open to the band to reject for its own reasons a reserve site selected by Canada, *it would have been equally open to Canada to reject sites requested by the band if there were valid reasons for doing so ...*[392]

Issue 1(b): Was a Reserve Created Pursuant to the *Indian Act*?

The issue to be determined here is whether a reserve has been set aside pursuant to the terms of the *Indian Act*. The Act at issue in these proceedings is the 1876 *Indian Act*.[393] By section 6 of the Act, a reserve is defined as follows:

> 6. The term "reserve" means any tract or tracts of land set apart by treaty or otherwise for the use or benefit of or granted to a particular band of Indians, of which the legal title is in the Crown, but which is unsurrendered, and includes all the trees, wood, timber, soil, stone, minerals, metals or other valuables therein.[394]

Canada argues in its written submission that the definition of "reserve" as set out in the *Indian Act* establishes neither the authority nor the process for creating reserves.[395] Instead, Canada contends that the phrase "set apart by treaty or otherwise" directs us to the provisionsof the treaty

---

391 Revised Submission on Behalf of the Government of Canada, March 1, 1999, p. 16.

392 Revised Submission on Behalf of the Government of Canada, March 1, 1999, p. 14.

393 *Indian Act*, SC 1876, c. 18.

394 *Indian Act*, SC 1876, c. 18, s. 6, Canada's Book of Authorities, tab 8.

395 Revised Submission on Behalf of the Government of Canada, March 1, 1999, p. 22.

relative to reserve creation. Canada refers to the work of Professor Richard Bartlett in "The Establishment of Indian Reserves on the Prairies" and his analysis of the distinction between the Robinson treaties, which expressly defined the reserves set out thereunder, and the numbered treaties, in so far as Treaties 3, 4, 6, 8, and 10 do not provide for a "reservation" of any portion of land ceded under treaty.

> The "numbered" treaties upon such surrender provide for the establishment of reserves within the surrendered territory ... Treaties #3, 4, 6, 8 and 10 provided for the acreage of the reserves but declared that their location would be determined by subsequent selection.[396]

In effect, Canada then relies upon its previous submission to the effect that reserve lands were never "set apart" under the treaty itself. Canada also addresses the term "or otherwise" in section 6 of the Act and specifically considers whether the lands surveyed by Patrick within Treaty 4 territory in 1880 at "Head of the Mountain" were "otherwise" set apart. Canada appears to equate the phrase "or otherwise" to the exercise of (a) the royal prerogative for setting the lands apart as reserve, or (b) any "other authentic testimony" of the exercise of either the royal prerogative or a statutory authority for setting the lands apart as reserve.

As previously stated, there is neither an order in council nor any written instrument which provides evidence of the Crown agreeing to Patrick's survey. Further, there is no evidence of "other authentic testimony" – namely, the exercise of a statutory authority. Therefore, Canada takes the position that the lands surveyed by Patrick in 1880 were not "otherwise set apart" as a reserve within the meaning of section 6 of the *Indian Act*, SC 1876, c. 18.

In contrast, the First Nation submits that Canada's suggested reading of section 6 of the *Act* – to require that reserves be set out expressly in the treaties themselves – places too restrictive a meaning on "by treaty" as used in the definition of the term "reserve."

The use of the term "by" within the phrase "lands set apart *by* Treaty" has a broad meaning and should not be limited to the text of the treaty. Drawing from a range of common usages, the First Nation believes that the term "by Treaty" should be given the meaning of land set apart "through the

---

396 Richard Bartlett, "The Establishment of Indian Reserves on the Prairies," [1980] 3 CNLR 11-12.

Treaty," or "in consensus of the Treaty," or "in a manner consistent with the treaty."[397] Such an interpretation would be consistent, the Band argues, with the liberal construction rule of statutory interpretation. In the absence of specific provisions in the *Indian Act* in respect of the creation of reserves, or a process of setting lands apart, we are left with an examination, on the facts of this case, of the requirements under treaty to establish reserves.

In the case of *Ross River Dena Council Band v. Canada*, the Yukon Supreme Court was asked to determine if land which had been set aside as a band village site, but not designated as a reserve by order in council, should be considered a reserve for the purposes of the application of section 87 of the *Indian Act*.[398] In considering whether the land constituted a reserve, Justice Maddison stated:

> The *Indian Act* never has provided a method of creating a reserve. It follows that reserves have been "established in many different ways and several methods now appear to be recognized as having validly set apart land for the use and benefit of Indians.": Jack Woodward, *Native Law*, 1996, p. 231. And as La Forest, G.V. said in *Natural Resources and Public Property under the Canadian Constitution*, University of Toronto Press, at p. 121:
>
> > In the areas not reserved by the proclamation [of 1763], reserves were established under many different types of authorities and instruments.[399]

In concluding that an absence of an order in council was not a bar to the creation of a reserve, Justice Maddison stated:

> The area reserved on January 26, 1965, was a tract of land that was (and is) vested in her Majesty. It has been applied for, for the use and benefit of a band: the Ross River Band. It was applied for, for a permanent use: a village site. That constitutes "use and benefit of a band" as in the *Indian Act* definition of "reserve."[400]

---

397 Submissions on Behalf of Carry the Kettle First Nation, February 5, 1999, p. 105.

398 Section 87 of the *Indian Act* deals with matters of taxation.

399 *Ross River Dena Council Band v. Canada*, [1998] 3 CNLR 284 at 293 (YSC).

400 *Ross River Dena Council Band v. Canada*, [1998] 3 CNLR 284 at 293-94 (YSC).

The federal Crown appealed the decision of the *Ross River Dena Council Band v. Canada* to the Yukon Court of Appeal, which rendered its decision on December 15, 1999, after the close of legal argument in this inquiry, although legal counsel to both the First Nation and Canada put the Commission on notice of the appeal decision.[401] The Yukon Court of Appeal, in a 2 to 1 decision, overturned the decision of Justice Maddison to find that the land "set aside" for the Ross River Dena is not a "reserve."[402] In its reasons, the court stated,

> Reserves were historically created by the federal Crown in fulfilment of its obligations under treaties with Indians, and of its fiduciary obligations generally with respect to Indians. As it is the prerogative of the federal Crown to establish a Reserve, evidence of the formal creation of a Reserve is usually in a federal Order-in-Council.
>
> ...
>
> To constitute a Reserve, the lands must be set apart*for the use and benefit of a band*. ...[403]

That there exists, and has existed in the Yukon, a statutory distinction between "lands set aside" and "reserves" was noted by the Court of Appeal to be beyond doubt. That this distinction is the result of a unique statutory regime required the Court of Appeal to give a meaningful interpretation to these two categories of land. The court inferred from its reading of an internal government document outlining the "procedure for setting aside or reserving lands in the territories" that "a more formal procedure, e.g. Order-in-Council, was contemplated for the creation of a reserve," thus allowing lands "set aside" to have a character quite distinct from "reserve land."[404]

In contrast, the Saskatchewan Queen's Bench decision of *Lac La Ronge Indian Band v. Canada* recently considered, among other issues, "what steps must be taken to create an Indian

---

401 Aly Alibhai, Counsel, Department of Justice, to David Osborn, Commission Counsel, Indian Claims Commission, December 18, 1999; Tom Waller, Counsel to Carry the Kettle First Nation, to Kathleen Lickers, Legal Counsel, Indian Claims Commission, January 24, 2000 (ICC file 2107-19-03).

402 *Ross River Dena Council Band v. Canada* (December 15, 1999), (YCA) [unreported].

403 *Ross River Dena Council Band v. Canada* (December 15, 1999), (YCA) [unreported], ¶ 83. Emphasis added.

404 *Ross River Dena Council Band v. Canada* (December 15, 1999), (YCA) [unreported], ¶ 108.

Reserve" in regards to land within Treaty 6. The judgment of the court was delivered by Gerein J, and in considering the procedure to create a reserve stated:

> There is no single method to create a Reserve. However, there are certain things which are essential. The Crown must make a deliberate decision to establish a Reserve; there must be consultation with the Indians; there must be a clear demarcation of the lands; and there must be some manifestation by the Crown that the lands will constitute an Indian Reserve.
>
> The position of the plaintiffs is that if there is consultation and demarcation, whether by survey or reference to the township plan, then a Reserve comes into existence. In my opinion, that approach is too broad and simplistic. There were times when this happened and a Reserve did result. There were instances when the surveyor was instructed to create the Reserve. No further approval was needed. There were other instances when the instructions were not all inclusive and the Crown did not expressly give its approval, but by its silence and subsequent attitude the Crown manifested its acquiescence in the land being constituted a Reserve. Then there were other instances when the instructions clearly limited the authority. In such a case a survey in itself was not sufficient.
>
> It is my conclusion that the land was not "set apart" until the Crown treated it as such. That could happen in more than one way, including an absence of protest.
>
> As best I can make out, on the prairies all of the Reserves are the subject of an Order-in-Council. However, I do not consider such Orders to be an essential part of the process of establishing a Reserve ... The Orders-in-Council were no more than an administrative act which confirmed or clarified what already was a reality.[405]

In our view, Gerein J has correctly summarized the law as we understand it with respect to when a reserve is created. The reasoning of the court in that respect closely follows that of this Commission in its previous work, including the Lucky Man Cree Nation Report.

The Commission does not accept the contention that the setting aside of reserve land, in the context of the numbered prairie treaties, was simply a matter of royal prerogative. The treaties contemplated the involvement of both parties in the reserve creation process and, in our view, a true meeting of the minds was fundamental to the selection, surveying, and setting aside of reserves. In the result, there must exist some evidence of the intent of both Canada and the First Nation that the lands identified should be set aside as Indian reserves. In the circumstances of this case, we are unable to conclude that the Government of Canada was party to such a consensus.

---

405 *Lac La Ronge Indian Band v. Canada*, [2000] 1 CNLR 245 at 337-38.

Although it is clear that the First Nation's and the government's representatives in western Canada were working towards the setting aside of reserve lands at the Cypress Hills location in the summer of 1879 and 1880, it is equally clear that the Prime Minister of the day, Sir John A. Macdonald, who was also the Superintendent of Indian Affairs at that time, and Edgar Dewdney, then the Indian Commissioner, had already decided by November 1880 that an Assiniboine reserve in the Cypress Hills would not be acceptable. It seems reasonably clear that this decision was made before the Patrick survey was received in Ottawa by Dewdney, on July 4, 1881. Although there is no documentary record to substantiate the rejection of Patrick's survey by Dewdney, all Dewdney's actions and correspondence speak to a decision having been made in late 1880 to relocate all the Indian people, including the Assiniboine, out of the Cypress Hills area. It is therefore not surprising that there is no record of the government's confirming Patrick's survey, as it did his Okanese and Starblanket surveys, which were also received by Dewdney in Ottawa in July 1881.

We have therefore concluded that it cannot be said that Canada ever accepted the existence of a reserve for the Assiniboine in the Cypress Hills. This is our conclusion irrespective of whether the foundation for the existence of the reserve is said to be the treaty or the *Indian Act*. The factual question in issue remains the same in either case – namely, whether Canada set apart the Cypress Hills lands as a reserve and treated it as such. We have concluded that Canada did not.

A related question is, of course, whether the Assiniboine people can be said to have "accepted" the reserves proposed for them at Indian Head, Saskatchewan, in 1883. Those reserves were obviously not accepted without some real reservations on the part of many of the followers of Chiefs Long Lodge and Man Who Took the Coat. As noted previously in this report, a significant number of these people refused in the first instance to abandon their residency in the Cypress Hills, and continued to return to the Cypress Hills seeking refuge in the troubled years that followed. Ultimately, however, it seems as though the government achieved its enunciated policy by relocating the Assiniboine people to reserves outside the Cypress Hills, reserves which, in the fullness of time, it must be said they "accepted" as their own. Whether it was "fair" at the time and whether it is "fair" today, that the Assiniboine area does not reflect any historical or spiritual connection of the Assiniboine, is a separate matter, one we feel compelled to address at the conclusion of this report.

Issue 1(c): Was a *De Facto* Reserve Created?

The third issue for the Commission's consideration was whether a reserve was created in a *de facto* sense. We understand such a situation would exist where a reserve has, in fact, beencreated, even though the formal procedures, which would normally be ascribed to, have not been followed.

"De facto" is defined in Black's Law Dictionary as follows:

> de facto /. In fact, indeed, actually. This phrase is used to characterize an officer, a government, a past action, or a state of affairs which must be accepted for all practical purposes, but is illegal or illegitimate.[406]

Both the First Nation and Canada submit that a reserve may be created on a *de facto* basis. In Canada's view, the concept of *de facto* reserve creation arises from the decision of the Supreme Court of Canada in *Canadian Pacific Ltd. v. Paul et al.*, [1988] 2 SCR 456, where the Court stated:

> It is clear that by virtue of the 1851 deed the land in question was vested in the Crown. Shortly thereafter it became an Indian reserve. The trialjudge placed some importance on the fact that there was no formal allocation of the land as a reserve prior to Confederation. It seems to us, however, to be somewhat inconsistent to demand such formality for allocation as a reserve while atthe same time accepting the lack of a "formal grant" of land to the Woodstock Railway Company. We are of the view that it can be accepted that the land in question was part of the Woodstock Reserve before Confederation.[407]

Similarly the decision in *Lac La Ronge Band v. Beckman*[408] is cited by Canada in support of the *de facto* creation of reserves. But, as Canada submits, the court in that case did not make a final determination as to precisely what was required to create a reserve *de facto*. Matheson J did, however, suggest that evidence of the use or occupation of the land in question by the band, as well as consideration by Canada of the land as a reserve, would be necessary to establish the existence of a reserve:

---

406 *Black's Law Dictionary*, 6th ed., 417.

407 *Canadian Pacific Ltd. v. Paul et al.*, [1988] 2 SCR 654 at 675.

408 *Lac La Ronge Band v. Beckman*, [1990] 3 CNLR 10 (Sask. QB).

> If this dispute over the Candle Lake lands was between the province and Canada, an argument by Canada that an Indian reserve existed, in fact, might receive serious consideration if the evidence justified a conclusion of a de facto reservation. But Canada does not take that position, quite properly, because there is no evidence to support it. The Candle Lake lands were never occupied, nor used, by any members of the Lac La Ronge Band as a reserve, and the lands were never considered by Canada, whose responsibility it was to establish Indian reserves, as a reservation.[409]

In effect, the question before the Commission is the very question that we have already addressed – namely, whether Canada by its conduct set aside a reserve. The First Nation argues that a *de facto* reserve can be said to be created in circumstances where Canada and the band treat an allocation of land as reserve, even though the land is not set aside in any formal manner. We agree that the law of Canada allows for such a *de facto* reserve creation, and in that respect the case authorities seem entirely consistent: *Canadian Pacific Ltd. v. Paul*,[410] *Lac La Ronge Band v. Beckman*,[411] *Ross River Dena Council Band v. Canada*.[412] However, fundamental to the creation of a reserve is a determination, as a question of fact, that both the First Nation and Canada accepted the allocated land as the First Nation's reserve. The totality of evidence does not demonstrate that the land set aside in the Cypress Hills was a reserve for the Assiniboine people. The Commission feels that recasting the issue as "*de facto*" does not change the essential factual question that we have previously answered.

Unlike *Paul*, we do not believe that the Crown, by its conduct in this case, can be found to have accepted the creation of a reserve for the Assiniboine. In fact, Canada started proceedings to move the Assiniboine out of the Cypress Hills even before they were presented with Patrick's survey. If we are to accept the First Nation's argument of a *de facto* reserve in this case, then we must be prepared to find that a surveyor hired by the government has the ability unilaterally to create a reserve, which the government must then accept – *de facto*. Surely this cannot be the case. For the

---

409 *Lac La Ronge Band v. Beckman*, [1990] 3 CNLR 10 at 36 (Sask. QB).

410 *Canadian Pacific Ltd. v. Paul et al.*, [1988] 2 SCR 654.

411 *Lac La Ronge Band v. Beckman*, [1990] 3 CNLR 10 (Sask. QB).

412 *Ross River Dena Council Band v. Canada* (December 15, 1999), (YCA) [unreported].

reasons already stated, we do not believe Canada accepted a reserve for the Assiniboine in the Cypress Hills.

Having found that the totality of the evidence does not support a finding that a reserve was created for the Assiniboine in the Cypress Hills pursuant to the terms of Treaty 4, the provisions of the *Indian Act*, or on a *de facto* basis, we are forced, somewhat reluctantly, to conclude that Canada does not owe an outstanding lawful obligation to the First Nation.

ISSUES 2 AND 3

2 If a reserve was created, was there a valid surrender or extinguishment of the Band's interest in the reserve?

3 If there was a valid surrender, did the Crown breach any treaty, fiduciary, or other lawful obligation owed by Canada to the people of Chiefs Man Who Took the Coat and Long Lodge?

Based upon our findings in Issue 1(a), (b), and (c), it is not necessary for us to consider Issues 2 and 3.

FAIRNESS IN THE RESULT: OUR SUPPLEMENTARY MANDATE

The Commission has since its inception understood that it has a responsibility to the Governor General in Council, described as a "supplementary mandate," to draw to government's attention circumstances where we consider the outcome to be unfair, even though those circumstances do not, strictly speaking, give rise to an outstanding lawful obligation. This is such a case.

The supplementary mandate of the Commission was first described in 1991 by the then Minister of Indian Affairs, Tom Siddon, in the following terms:

> If, in carrying out its review, the Commission concludes that the policy was implemented correctly but the outcome is nonetheless unfair, I would again welcome its recommendations on how to proceed.[413]

---

413 Tom Siddon, Minister of Indian Affairs and Northern Development, to Ovide Mercredi, National Chief, Assembly of First Nations, November 22, 1991.

Moreover, in a 1993 letter to the Commission, the Minister of Indian Affairs, Pauline Browes, reiterated the position taken by her predecessor. Minister Browes's letter makes two key points in relation to the Commission's jurisdiction:

> (1) I expect to accept the Commission's recommendations where they fall within the Specific Claims Policy; (2) I would welcome the commission's recommendations on how to proceed in cases where the commission concluded that the policy had been implemented correctly but the outcome was nevertheless unfair ...[414]

The Commission has exercised this authority sparingly and only in unique circumstances which give rise to a demonstrable inequity or unfairness that we feel should be drawn to the attention of the Government of Canada.

The Commission relies upon its supplementary mandate in this case, because the "outstanding lawful obligation" test, which is defined in the Specific Claims Policy, will not bring this historical grievance to a close. Moreover, the historical circumstances of the Cypress Hills Massacre and the relocation of the Assiniboine people out of the Cypress Hills require a just solution, which cannot be achieved within the framework of the Specific Claims Policy. Indeed, it seems to us that the claim put forward by the Carry the Kettle Band has less to do with monetary compensation than it does with some form of recognition of the connection between these Assiniboine people and the Cypress Hills, one that would recognize, rather than deny, their historical occupation and spiritual and cultural connections to these lands.

It is clear to us that, when reserves were selected and apportioned under Treaty 4, the Assiniboine people sought to preserve their connection to the Cypress Hills. Although many other First Nations had sought sanctuary in the Cypress Hills, the Carry the Kettle Band repeatedly fought the government's attempts to relocate it to other reserve lands. Eventually, the Carry the Kettle Band succumbed to this pressure, but it did so reluctantly and only when faced with the spectre of starvation as an alternative. Only the Nekaneet Band, which refused to accept any reserve as a substitute until 1913, could be said to have been more steadfast in its commitment to the Cypress

---

414 Pauline Browes, Minister of Indian Affairs and Northern Development, to Harry S. LaForme, Chief Commissioner, Indian Claims Commission, October 13, 1993.

Hills. We have found the ancestral claim of the Carry the Kettle Band to the Cypress Hills to be historically accurate and morally compelling.

We would also point out to the Government of Canada that it was this very band which was victimized by American traders and wolfers in the event known as the Cypress Hills Massacre. Indeed, the Carry the Kettle community continues to journey annually to the Cypress Hills, and the site of the massacre is a place of significant emotional and spiritual importance to it. Remarkably, the location of the Cypress Hills Massacre is not set aside or demarcated in any way. At least part of this site remains in private hands. Given that the Cypress Hills Massacre was one of the instrumental historical events in the settlement of the Canadian West, this situation strikes us as surprising. It is clear, in the final analysis, that the Carry the Kettle First Nation received treaty land elsewhere in Saskatchewan and, indeed, we are aware that in recent years a treaty land entitlement was advanced by that First Nation to secure its proper quantum of land under Treaty 4. It is difficult to suggest, at this juncture, that those other reserve lands were not "accepted" by these Assiniboine people in substitution for the Cypress Hills lands. However, none of these facts addresses the historical grievance. They do not recognize the connection that has existed between the Carry the Kettle people and the Cypress Hills since time immemorial, nor do they recognize the historical importance and trauma associated with the Cypress Hills Massacre.

We believe that circumstances often arise in the context of aboriginal land claims where it is possible to resolve a historical grievance and simultaneously create a great deal of good will with the investment of a relatively small amount of money. Indeed, in some respects, many claims would be more usefully resolved if they were addressed on the basis of the pursuit of a just solution, one that recognized important historical connections to the land, rather than through the payment of vast sums of compensation. This case seems to us to be exactly such a circumstance. It is not really a claim about money, and a fair result would be for the Government of Canada to work together with the Assiniboine people to achieve two objectives. First, the site of the Cypress Hills Massacre should be acquired, and appropriately designated and recognized, as the important historical location it is. Secondly, the government should work together with the Assiniboine people to secure an appropriate site in the Cypress Hills for the cultural and spiritual purposes of this First Nation. In our view, this can be done economically and in a manner that is respectful of the other legitimate stakeholders who occupy, use, and enjoy the Cypress Hills. In our opinion, it is only fair, however, that those others

recognize that it is these very Assiniboine people who have sought sanctuary in the Cypress Hills since before recorded history. The Government of Canada does not have a legal obligation to do either of these things, but in our view it would be the right, just, and moral thing to do.

PART V

CONCLUSIONS AND RECOMMENDATIONS

We have concluded that a reserve in the Cypress Hills was not created for the people of Chiefs Man Who Took the Coat and Long Lodge by the terms of Treaty 4, the provisions of the *Indian Act*, or on a *de facto* basis. We nevertheless recommend, pursuant to our supplementary mandate, that the Government of Canada recognize the Carry the Kettle First Nation's historical connection to the Cypress Hills and restore to the Assiniboine people their connection to this territory.

RECOMMENDATION 1

That the site of the Cypress Hills Massacre be acquired by the Government of Canada and appropriately designated and recognized as the important historical location it is.

RECOMMENDATION 2

That the Government of Canada work together with the Assiniboine people to secure an appropriate site in the Cypress Hills for the cultural and spiritual purposes of this First Nation.

FOR THE INDIAN CLAIMS COMMISSION

P.E. James Prentice, QC
Co-Chair

Roger J. Augustine
Commissioner

Carole T. Corcoran
Commissioner

APPENDIX A

CARRY THE KETTLE FIRST NATION CYPRESS HILLS INQUIRY

1	Request to conduct an inquiry	August 30, 1996
2	Planning conferences	November 26, 1996 March 11, 1997
3	Community sessions	May 30, 1997 October 20, 1997

The Commission heard from the following witnesses:
Chief James O'Watch, Elsie Koochicum, Kaye Thompson, Dr Kenneth Ryan, Melda Netmaker, Andrew Rider, Delmer Runs, Wilma Kennedy, Bertha O'Watch, Cora Grey

4	Legal argument	May 5, 1999

5 Content of the formal record

The formal record for the Carry the Kettle First Nation Inquiry consists of the following:

- 19 exhibits tendered during the inquiry, including the documentary record (3 volumes of documents with annotated index)
- written submissions from counsel for Carry the Kettle First Nation and counsel for Canada
- transcripts from community sessions (two volumes)

The report of the Commission and letters of transmittal to the parties will complete the formal record of this inquiry.